Public Utilities

FORTNIGHTLY

March 4, 1943

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PUBLISHERS

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Public Utilities Fortnightly

VOLUME XXXI *March 4, 1943* NUMBER 5

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

It seems that Hitler has had to postpone indefinitely his plans for further invasion to the West. This is obviously because he has been unexpectedly delayed while visiting former friends in the East. But we are glad for many reasons—some of them quite selfish—that the Luftwaffe has, for the moment, more pressing duties than the bombing of our eastern seaboard.

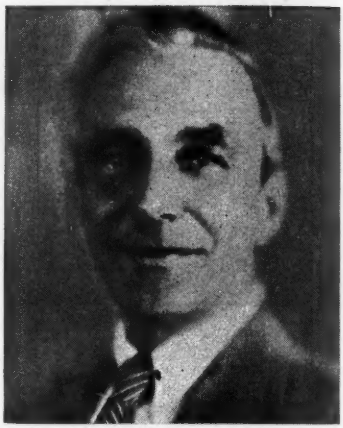
For one reason, such activity would bring home to quite a few post-war planners the old homily that the best way to cook a rabbit is to start out by catching your rabbit. Post-war planning has been increasing at a considerable rate since our invasion of North Africa. And while we agree with Senator George of Georgia that there are advantages in settling certain fundamental objectives of a war while the war is still on, yet we know that it must be disconcerting to a post-war planner to have the grizzly face of Mars, looking on over his shoulder and breathing too closely down his neck, as he works on his Utopian chart.

There are other developments which must be disconcerting to the professional post-war planner. For example, there is the House of

JONATHAN BROOKS

The battle of Huntington, Indiana, has drawn to an inconspicuous close.

(See Page 275)



JAMES H. COLLINS

The most important transit job today is stretching rubber.

(See Page 267)

Representatives Committee on Appropriations which coolly knocked off the sum of $1,400,000, earmarked for the National Resources Planning Board. Much of this money would undoubtedly have gone into blue prints for a brave new world. But from all accounts there are elements in the House of Representatives who, like Mars, would like to be looking over the planners' shoulders while the blue prints are still in a comparative state of flux.

Needless to say, the post-war planning program has come into the utility picture. Vice President Wallace started the ball rolling in this direction several weeks ago when he began talking about international TVA's, expanded air lines, and other improved international facilities of communication and transportation. In this issue we present an article on post-war planning for transportation by T. N. Sandifer, Washington correspondent, who recently became associated with our editorial staff.

We were interested to note, along this line, that identical resolutions have been introduced in the Senate and the House for the

formation of special committees to start making plans for reconstruction days. Senator George, chairman of the Finance Committee, has sponsored such a move in the Senate, while Representative Hendricks of Florida has introduced a companion measure in the lower chamber. Both call for the appointment of a 9-man committee, five Democrats and four Republicans, to study all phases of the problem and make recommendations to Congress.

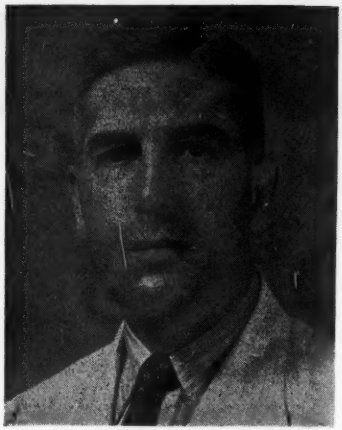
On February 16th the War Production Board finally announced to the world its long-awaited reorganization order setting up a special Office of War Utilities under the directorship of J. A. Krug. Inasmuch as this had already been announced by a "preview" press release some three weeks earlier, the news that Donald M. Nelson had finally signed the order created little stir among the laymen.

However, one detail caught our eye and made us feel a little like taking a bow. It was the announcement that Mr. Krug's new bureau shall be known officially as the "Office of War Utilities." This change in title compares with the "Office of Power Director," as originally announced in late January. Why the sudden change? Probably the suggestion came from a number of quarters, but we like to think that it might have been influenced—in part at least—by a little editorial which appeared right in these "Pages with the Editors" in the last issue of Public Utilities Fortnightly. Since our observations proved so prophetic, the readers will pardon us if we repeat the following paragraph from that issue:

> "We are inclined to agree, however, with a minor dissent on the part of some communications men with respect to the title of Mr. Krug's new office. As 'Power Director' it would seem, superficially at least, to relegate the other utilities to second-fiddle positions. This could never have been the original intent of Mr. Nelson, nor the present purpose of Mr. Krug. As an alternative, we suggest the 'Office of Utilities Director,' or at least 'Office of Power and Communications Director.' For downright poetical euphony, we might also suggest 'Office of the Director of Public Service.' But maybe some of the other 'czars' would think that was 'taking in too much territory.'"

It is things like that that restore our faith in the vaunted Power of the Press. But maybe Mr. Krug would say to that, that we were "taking in too much territory."

James H. Collins, whose various articles have frequently appeared in these pages, began writing around 1900. He was a contributor to *The Saturday Evening Post* for twenty years and has written for numerous other magazines and business publications. His article, "'M-day' Still Has a Place on the Drawing Board," begins on page 267 of this issue.



T. N. SANDIFER

Magic carpets for the future are a part of today's plans.

(See Page 282)

The author of the article entitled "Winters, the WPB and the 'Freeze,'" beginning page 288, is a newcomer to the Fortnightly. He is William H. Gray, a native of west Texas, and works for a newspaper that covers the heart of the ranching country of Texas. He has spent the last year setting up a publicity division for the Angus cattle breeders in Chicago. He does free lance writing in the trade magazines and also writes pieces for the Associated Press, Central Press Association, a Kansas paper and a Colorado paper, and keeps an eye out for news for *Time* magazine.

Jonathan Brooks is the pen name of John Calvin Mellett, formerly a newspaper writer in Indianapolis, New York, and Washington, who has been doing advertising work and writing fiction for several years. He has handled advertising and publicity for utility companies in the Middle West. Mr. Brooks was born in Elwood, Indiana, and is a graduate of Indiana University. His article appears on page 275.

Among the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

Fair value is still the basis for return, according to a decision of the South Dakota Supreme Court. (See page 293.)

The next number of this magazine will be out March 18th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257–320, from 46 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

JOHN W. BRICKER
Governor of Ohio.

"The suppression of human rights is the first move toward autocratic government."

DONALD M. NELSON
Chairman, War Production Board.

"As long as there's a soldier on Guadalcanal who can't say, 'I'm tired of fighting the Japs,' I have no choice but to go on."

STATEMENT
By the War Department.

"Our Army of over four million men is dependent upon the public utilities and they are giving us the power that will help to smash the Nazis and the Japs."

EDITORIAL STATEMENT
The Wall Street Journal.

"If there is any other industry of magnitude in the country which confronted the war emergency with as poor a position as that of the rail carriers, it is hard to discern which it is."

JEANNETTE MILLER
Kansas City street-car operator.

"I don't think women get confused as much as men do. And it seems to be the men [street-car] operators get crabby and grouchy quicker than women. Women can answer more silly questions and not get mad about it."

J. HOWARD PEW
President, Sun Oil Company.

"Compelling men to work where they do not desire would strip the worker of his dignity as an individual and reduce him to the status of a serf. Free men always will outproduce slave labor."

JOHN E. RANKIN
U. S. Representative from Mississippi.

"We are just in the beginning of the electric age. When this war is over, this program will take on new life and grow in speed and proportion until we shall have a completely electrified America."

FREDERICK C. CRAWFORD
President, National Association of Manufacturers.

"Instead of being an outmoded method, the cherished bailiwick of a few greedy ones, free enterprise has proved itself to be one of the great impelling forces of human conduct, effective alike in war and in peace."

EDWARD MARTIN
Governor of Pennsylvania.

"At a time when every dollar is needed for war, our social experiments go on and on, while we are fighting to survive. Our multiplied and swollen Federal agencies are sucking the life blood out of a nation fighting for its very life."

PHILIP MURRAY
President, Congress for Industrial Organization.

"Labor has made a major contribution to economic stabilization in its whole-hearted acceptance of wage stabilization. In return, labor must be secured in its present wage and other union conditions and must be assured the continued opportunity to adjust inequalities."

USHER L. BURDICK
U. S. Representative from North Dakota.

"We can have all the gasoline and rubber we want to equip our fighting forces no matter what the size of the Army and Navy and Air Force—we can have all the gasoline and rubber we want to keep up production, if this government will wake up and use the lignite deposits of the United States."

HANS ELIAS
Middlesex University.

"The post-war world will be so poor that women will have to go back to their great-great-grandmothers' spinning wheels and men to building their own houses. There will be no cars, radios, washing machines, or refrigerators in the world that will exist after the war. The masses of the people will be impoverished by the burdens which the war imposes upon everyone."

Excerpt from report submitted to Education and Labor Committee.

"The same absence of balance which threatens our war production program threatens our post-war economy. If we continue destroying America's small businesses and uprooting our smaller communities, and many of our large ones as well, we shall not recognize post-war America. The clamor to maintain a vast standing Army and Navy and a huge armament industry will be almost irresistible."

EDITORIAL STATEMENT
The New York Times.

"It is to be hoped that WPA, in the form in which it has existed, will never be revived. It was in too many ways inefficient and ill-conceived. One of the fallacious assumptions on which it rested was that it was necessary to preserve the *existing* skills of workers of all kinds, regardless of whether or not a public demand remained for those skills in the same quantities as formerly. What was much more necessary was to see that the unemployed were trained for new skills for which an actual or genuinely potential demand existed."

FRANK M. DIXON
Ex-Governor of Alabama.

"The retention of democracy requires the exercise of its functions. As an athlete becomes soft and flabby where his muscles are disused, so does the spirit of democracy where it is not practiced. Give us a few more years of the political pap-sucking which has bought us and paid for us in the past, a few more years of the mess-of-pottage form of government, and we will be fair spoil for the 2-penny American Hitler whom the future will surely bring, the planner who plans our democratic privileges into oblivion. Let those of us who love democracy do a little planning too."

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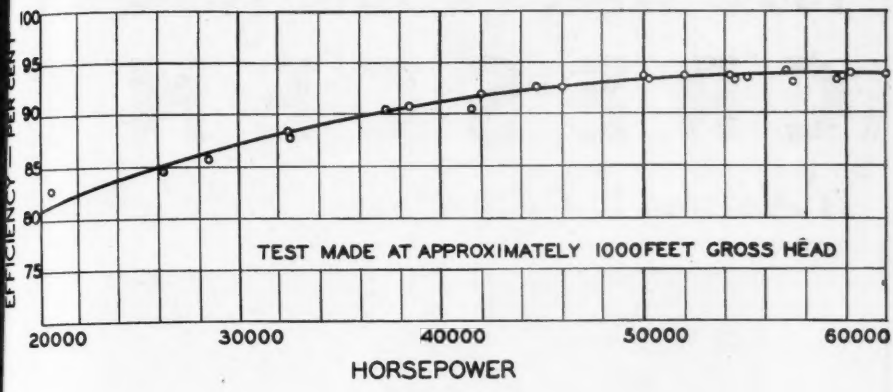

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2. Keep batteries clean and dry. Wash off tops with a solution of one pound of bicarbonate of soda to one gallon of water; rinse and dry thoroughly.
3. Keep batteries fully charged, but not overcharged. Check your D. C. control bus voltmeter to see that it is in calibration.
4. Keep records of water additions, voltage and gravity readings for comparisons as batteries grow older.

If you wish more detailed information or have a special battery maintenance problem, write us. We want to help you get the long life that is built into every Exide battery. Ask for booklet, Form 3225.

OUR strongest defense is a hard attack. That's an old Naval tradition now proving its truth on all the waters of the Seven Seas.

Similarly, the best defense against maintenance problems is a relentless, unceasing attack on negligence and wear. Your best weapons of attack are to be found in the four basic rules of battery maintenance listed at the left. Follow them closely to protect your battery from the war of attrition waged by carelessness or neglect. And remember, Buy to Last and Save to Win.

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A BOY COMES HOME

REMEMBER how he used to come home? There'd be the slam of a car door in the dusk. "So long, Joe, see you tomorrow." Then the swift, light footfalls . . . the thud as 160 pounds of wiry muscle hit the porch in an easy bound . . . the crash of the front door and the newly baritone voice calling, "Hey, Mom, when do we eat?"

Now, a Marine flyer, he comes thundering in to Guadalcanal. The bomb racks are empty and miles away a Jap officer volleys desperate orders from the bridge of a sinking destroyer.

On the flying field below, as his plane circles, the crawler tractors and their drivers are at their endless task, filling fresh shell holes and bomb craters, making a safe surface for him. Back and forth the tractors go, looking from this height like friendly beetles, each rolling a ball of earth ahead of it. He is conscious of relief. That strip hadn't looked too good when he took off. . . . Now he's back at his home port again—and safe!

* * *

To make his homecoming safe, the rugged International TracTracTors which the Marines took to Guadalcanal have worked unceasingly throughout that wild fight.

We take it to be our job, and the only job of the many machines and weapons we make for Army, Navy, and Marines, to do our best to see that every American fighting man comes home — AND COMES VICTORIOUS.

INTERNATIONAL HARVESTER COMPANY

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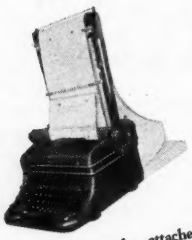
1



EGRY SPEED-FEED may be attached to any standard make typewriter in one minute, and with Egry Continuous Forms, doubles the output of the operator—makes one machine do the work of two.

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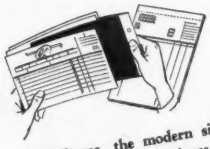
EGRY TRU-PAK Register speeds the writing of all handwritten records. Assures control over every business transaction.

3



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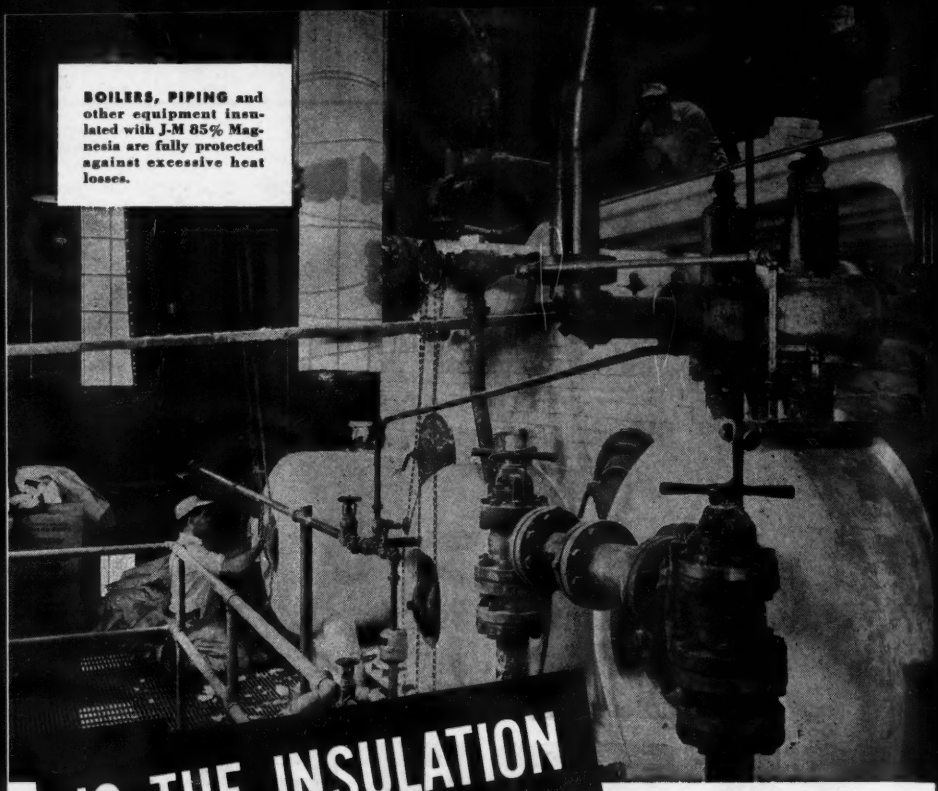

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without stopping

Elliott self-cleaning strainers are going strong in all the industries that demand clean, dirt-free water. They clear water for cooling bearings, cooling transformers, cooling generator coils, supplying many other needs of widest range.

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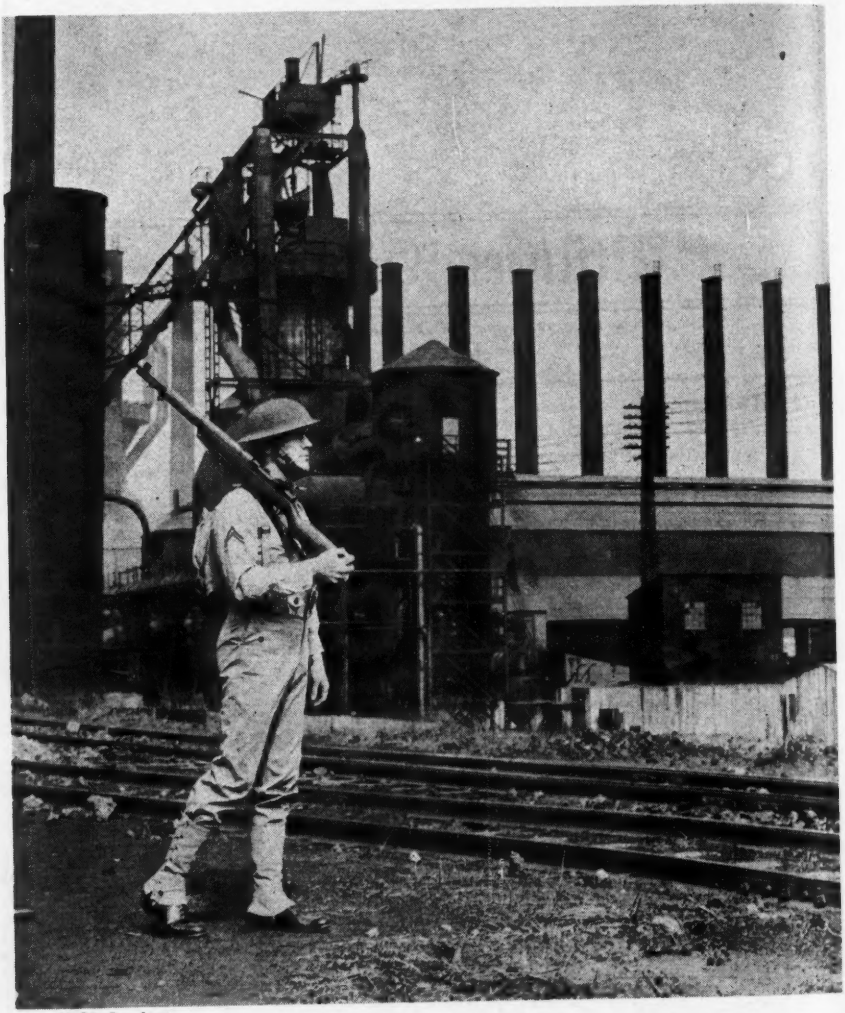
Utilities Almanack

Due to war-time travel restrictions, conventions listed are subject to cancellation.

MARCH

4	Th	¶ *New England Gas Association will hold convention, Boston, Mass., Mar. 18, 1943.*
5	F	¶ *American Society of Tool Engineers will hold meeting, Milwaukee, Wis., Mar. 25–27, 1943.*
6	Sa	¶ *Electrochemical Society will hold spring meeting, Pittsburgh, Pa., Apr. 7–10, 1943.*
7	S	¶ *Midwest Power Conference will be held, Chicago, Ill., Apr. 9, 10, 1943.*
8	M	¶ *Missouri Association of Public Utilities will hold session, Excelsior Springs, Mo., Apr. 16, 17, 1943.*
9	Tu	¶ *Illinois Telephone Association will hold meeting, Chicago, Ill., Apr. 20, 21, 1943.*
10	W	¶ *National Electrical Manufacturers Association will hold spring meeting, Chicago, Ill., Apr. 20–23, 1943.*
11	Th	¶ *American Gas Association War Conference on Industrial and Commercial Gas opens, Detroit, Mich., 1943.*
12	F	¶ *American Water Works Association, Minnesota Section, starts convention, Minneapolis, Minn., 1943.*
13	Sa	¶ *United States Independent Telephone Association will hold spring executive conference, Chicago, Ill., Apr. 22, 23, 1943.*
14	S	¶ *Missouri Valley Electric Association will hold meeting, Kansas City, Mo., Apr. 28–30, 1943.*
15	M	¶ *North Central Electrical Industries will hold all-industry conference, Minneapolis, Minn., Apr. 26, 27, 1943.*
16	Tu	¶ *American Society of Mechanical Engineers will convene, Davenport, Iowa, Apr. 26–28, 1943.*
17	W	¶ *Ohio Independent Telephone Association will convene, Columbus, Ohio, Apr. 27–29, 1943.*



Harold M. Lambert

Guardian of Public Service

Public Utilities
FORTNIGHTLY

VOL. XXXI; No. 5 MARCH 4, 1943

"M-day" Still Has a Place on the Drawing Board

A year ago, it looked as though California regulatory officials would have to do something drastic about war worker transportation. But rubber has been stretched, and the day of wrath is still undated. Most valuable lesson—wait until you see how the cat is going to jump; also ask the animal for facts, and coöperate.

BY JAMES H. COLLINS

Do you remember the articles that were published only a few years ago, explaining just what would happen to everybody on "M-day"?

That was to be mobilization day, when the Army would take over. The writers endeavored to send chills up and down the peaceful citizen's spine. Everything would change overnight. Nobody would be free to do anything any more. Every man, woman, and child would be ordered to a predetermined place; every businessman would find himself working for the Army. Plans were complete for a goose-stepping America.

Now, we know that it didn't happen that way.

The Army did a lot of honest constructive work, looking to "M-day," for it listed thousands of businesses for potential military production, and gave many of them educational orders. But even the Army's ideas of mobilization were askew, too small—evidently such

a complete mobilization, on a given day, depends on knowing just what kind of war is going to be fought.

Also, a few generations of drill seem to be necessary, so that people never question authority. To the German, with his militaristic mind, and the Nip, with his sun-myth emperor, there is no thinking about the why or wherefore of an order. Somebody higher up has thought it all out. Who are Fritz or Togo to trespass upon the intellectual processes of Highest Authority? Der Fuehrer is always right.

But in this country an order of "M-day" type simply starts everybody thinking.

Is this thing necessary? Is this the right time to do it? Is that the best way to do it? It doesn't apply to me, does it? And how about the guy who gives the order—what does he know about it, anyway?

You can order John Citizen around, but he obeys better if you do it with a smile. If you go and see him first, and ask where the shoe is going to pinch him, you may want to modify your order to fit his case, and he will carry it out in a better spirit, with better results.

FOR more than a year now, the California Railroad Commission has had a potential "M-day" on the drawing board. At first, it appeared as though drastic measures would be necessary to avert a traffic crisis. But before any official ukase could be issued, it was necessary to have some facts. So, the commission sent its engineers into the field to get facts from John Citizen and, ever since, has been getting more facts, and "M-day" has constantly receded. The ukase hasn't been issued yet, and probably never will be.

Yet, without an order, John Citizen is complying with the commission's latest recommendation, a statewide staggered-hour plan, to the extent of 73 per cent, with every reason to believe that this will be improved to 100 per cent, for practical purposes.

After Pearl Harbor, the problem of getting war workers to their jobs when the tires on their own cars wore out was a terrifying thing. The commission immediately began a survey[1] to determine how many used utility transportation, how many drove their own cars, how long tires would probably last, condition of cars, doubling up with fellow employees, and so on.

This survey was made by questionnaires sent to war plants, covered the three industrial regions of San Francisco, Los Angeles, and San Diego, and gave real grounds for anxiety.

Out of 147,000 war workers reporting, 83.8 per cent, or 124,000, drove to work in their own cars, mostly traveling alone (1.6 persons per trip). Condition of tires was such that practically all would be worn out in fourteen months, and a large percentage in ten months.

THEN a more detailed study was started to cover every sizable war plant, measure its transportation needs when tires were gone, and plan utility transportation by street car, motorbus, or railroad. One plant would be on utility lines, and needed increased service; another could be reached by extending bus routes; still others would need rail extensions—and so on. The final plan took the shape of maps for

[1] "California's War Transit Problem—'Unusual.'" PUBLIC UTILITIES FORTNIGHTLY, Vol. 30, No. 3, p. 143, July 30, 1942.

each war plant, with the region roundabout in which employees lived, the increased service or new rail lines that would be needed if they had to give up their cars—a perfect "M-day" set-up, only needing the implementing order.

But nowhere yet has such an order been given for any war plant!

According to the first survey of war workers' cars, the majority should now be out of service, because more than fourteen months have passed since Pearl Harbor. But today nearly as many war workers are traveling in their cars as a year ago. A recent check showed 58 per cent driving their own cars, 27 per cent riding with fellow employees, and only 7 per cent using utility transportation; 6 per cent walk to work; less than one-half of one per cent use train service.

Indicating that, if an order to switch from private cars to transit service had been given as a "must" any time in the past year, it would have interfered with a very definite ability in war workers to take care of the transportation problem themselves, up to a point that must surely be approaching, but cannot yet be definitely dated. It may recede even further, if the public introduces factors that could not be disclosed by surveys.

For example, after war workers had reported that their tires would last about twelve months last spring, they reduced speeds to 40 miles an hour, and cut down unnecessary trips before it became compulsory, thus saving a lot of mileage for transportation to work. These savings are now showing up in longer tire life.

Then, they doubled up on tires, confounding the experts.

Last spring, Tom and Frank each had cars, with rubber to last eight or ten months. Both cars should now be laid up. But when each was down to three tires, Frank doubled up with Tom on rubber, having the car in best condition, and they may be riding to work together for another six months. Ratio —one car plus seven tires instead of two cars laid up.

"Camelback" for retreading has been granted with considerable liberality to war workers—so liberally that recently, checking up on ball game attendance, the rationing authorities have announced that not even a war worker can get more rubber if he uses his car for unnecessary driving. When gasoline rationing came in November, there was a similar liberality in granting "B" and "C" cards, only about 5 per cent of such applications being rejected. As there is no gasoline shortage on the Pacific coast, pleasure driving gets a broader interpretation.

Again, used cars with as many as twelve good tires could be bought

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¶ *". . . used cars with as many as twelve good tires could be bought around Los Angeles last year up to the time that all except five tires had to be turned in to the government, and since then the tires turned in have been retreaded and are being sold to motorists who can show necessity as war workers. And retreaded tires of a kind have been obtainable until recently."*

around Los Angeles last year up to the time that all except five tires had to be turned in to the government, and since then the tires turned in have been retreaded and are being sold to motorists who can show necessity as war workers. And retreaded tires of a kind have been obtainable until recently.

ALL in all, the day of wrath was postponed.

John Citizen loves to study the rules in a new game of this kind, and try all the angles.

At one end, his ingenuity tends to prolong the useful life of his car, by doubling up riders, or rubber—that may amount to as much as 90 per cent of the citizenry. And at the other end, he is arrested for speeding or drunken driving, both of which showed sharp increases—maybe 10 per cent.

In Germany and Japan, of course, they do these things better—Fritz and Togo, having no cars, do not try any angles.

California authorities discovered last year that the transportation problem, besides being serious, was also extremely fluid. Day-to-day information about what was happening was more important than over-all plans and official directives.

If the worst came to the worst, various trolley and rail extensions would have to be built to war plants. But so far, none have been built, and one concern, formed last summer to operate a bus line to shipyards, using converted busses, has gone out of business for lack of traffic.

THE first actual step affecting war workers came in November, when the Southern California War Transportation Council started a staggered-hour plan in the whole area, preparatory to the transfer of traffic from automobiles to public carriers when it becomes necessary.

This council is made up of representatives from the Army, Navy, California Railroad Commission, Office of Defense Transportation, United States Maritime Commission, Office of Civilian Defense, Transportation Administrator of the City of Los Angeles, and a coördinator of other local transportation administrators. Its plan was drawn up by a technical committee. The Los Angeles area was most directly affected, because it has the greatest diversion problem.

Metropolitan Los Angeles has more than 1,000,000 automobiles, more than peace-time Germany, Japan, and Italy combined, nearly as many as Canada, nearly half as many as either Great Britain or France in normal times.

Last summer, the automobile club of southern California estimated, after a survey, that private automobiles were being laid up at the rate of one a minute. That could go on for a year, and the Los Angeles area would still have half a million cars left, and doubtless will have many left a year hence.

Having developed on automobiles to such an extent that everybody had some kind of jallopy to get to work, to hunt a job, to go to the movies or the beach, or even get cooled off, the southern California area was a mighty poor market for utility transportation. About 1910, when the city had around 325,000 people, the street-car systems got stunted, and have not grown since at anything like the community rate. About 20 per cent of the population used trolleys and busses before Pearl

Automobiles in Metropolitan Los Angeles

"METROPOLITAN Los Angeles has more than 1,000,000 automobiles, more than peace-time Germany, Japan, and Italy combined, nearly as many as Canada, nearly half as many as either Great Britain or France in normal times. Last summer, the automobile club of southern California estimated, after a survey, that private automobiles were being laid up at the rate of one a minute. That could go on for a year, and the Los Angeles area would still have half a million cars left, and doubtless will have many left a year hence."

Harbor, and last year that grew only 25 per cent on itself.

POTENTIAL utility customers are about 600,000 people living within reasonable distances of trolley or bus routes. Some 2,000,000 more live where, for emergency purposes, it may be necessary to take the busses and trolleys to them.

Even so, it is not certain that they are ready yet to ride. Last year the Pacific Electric started the construction of a trolley line from Los Angeles to Terminal Island, shipyard center. The project is being financed by the Maritime Commission, and the company has secured extra cars to haul the shipyard workers. But the latter continue to reach their jobs in their own automobiles; they are being given rubber and gasoline with what looks like liberality to an "A" card holder in the West, and would be prodigality to anybody owning an automobile in the East. So, when the line is finished, which will be soon, there is no assurance that there will be any great number of passengers. And then there might be more than was expected. If the rubber shortage goes on into 1944, there will probably be straphangers.

Southern California's staggered-hour plan was devised partly to relieve the load on utilities, partly to transport war workers to plants off the trolley and bus routes.

Including all of Los Angeles and Orange counties, except some mountain regions on the north, part of San Bernardino county on the east, and San Diego county on the south, it dovetailed into gasoline rationing, and went into effect just before the Christmas shopping rush. It was an extension of the staggered-hour plan put into effect by the city alone last April, and, like that plan, was largely voluntary. No-

body had authority to make it obligatory, and experience with the previous plan had shown that success was more a matter of public education.

AFTER Pearl Harbor, the coming of gasoline rationing in November raised more apprehension than anything that had happened since the country went to war. Radical changes were feared. Much was said about the change in habits, about western people, accustomed to moving around in the wide open spaces, rebelling against rules.

Nothing much happened! Western people either adapted themselves like good little boys and girls, or doubled up in driving, or got aboard the cars and busses. There was a rush of applications for "B" and "C" cards, which were granted with unexpected liberality — with check-ups of ball parks, theaters, and recreation places later, to find the motorists who were abusing their privilege. One woman with a "B" card was cited the other day for driving up and down to exercise her dog. Holders of "A" cards are found to be a good check on violators. Motorists have discovered that the mills of the gas rationing gods grind exceedingly small—and not so slowly. The *recommended* plan was tailored to fit local conditions.

Retail stores, wholesale houses, banks, office forces, city employees, schools, attorneys, and insurance people in the downtown area of Los Angeles, were given opening and closing hours—no retail store, for example, was to open between 8 and 9:45 A.M., or release more than half its employees between 4 and 6 P.M. Definite areas were diagrammed to show where the rules applied. For outlying business and war industry centers, as Pasadena and San Bernardino, the schedules were adjusted to local conditions. San Diego had already got its own staggered-hour plan going, and it was working well. So, in the spirit of "wait-look-see" which has come to prevail in the California Railroad Commission's war traffic planning, no changes were suggested there—watch the plan in operation and learn something!

ALTHOUGH the other plans went into effect three weeks before Christmas, and right after gas rationing, when it was not always easy to make changes in shopping hours, there was better than 50 per cent coöperation, and the "violations" were more interesting than troublesome.

Generally, a little investigation and some horse trading were needed, if a business concern was reported out of line with the opening and closing hours for its trade.

For instance, a wholesale house admitted keeping open later than its recommended 3:30 P.M. Management explained that many of its customers were war plants, buying tools and supplies on priorities, and sending in the daily orders late in the afternoon. If the jobber was closed, war schedules would be thrown out of gear. The case called for adjustments in the war plants, which readily complied when matters were explained.

Then, some of the "violators" pleaded competitive reasons for keeping open after hours. Their goods were sold by other branches of the trade that could supply customers. The jobber was asked to close at 3:30 P.M., but his goods might be obtained from retailers who kept open later.

Labor angles were uncovered—the meat cutters' union had its own working schedule, from 8 A.M. to 6 P.M., and felt that it had fought for something that must be protected.

Small concerns assumed that the schedules did not apply to them, with only a few employees.

MANY of these tangles were settled by turning them over to the trade associations in each line, and others by going out, getting the facts, and asking for coöperation.

By mid-January, there was 73 per cent compliance.

In downtown Los Angeles, it was anticipated that from 180,000 to 250,000 new car and bus riders would be added by gas rationing, an increase in traffic of 30 to 40 per cent.

Traffic managers and engineers who rearranged car and bus schedules had to take into account something more complex than hauling two loads morning and night over routes 1, 5, 6, 10, and so on. For routes 1, 6, and 10 might have to run through the crowded downtown district before they got turned around and went back for the second load. The proportion of riders who were to be carried on such routes had to be figured separately from those carried on simpler runs.

For a few days, there was an unprecedented increase in traffic, and many problems arose, such as Christmas shoppers hurrying downtown early and getting tangled with the working traffic. But with good spirit, and clear explanations in the daily papers, the public gave coöperation that eased these situations, and after the holiday rush, transit companies looked back at those tangles a little wistfully. The January traffic had then fallen off to such an extent that they could have handled more.

THE toughest problem, after all, was one that is not always given sufficient attention in war planning—the difficulties in getting and holding trainmen and motor drivers. Pacific Electric had plenty of cars and busses, but was short of men. Los Angeles Railway had enough men, but could have used more equipment.

There seem to be limited solutions for the man-power shortage, because in San Diego, where war workers leaving a trolley line have to ride several miles to their jobs, the transit company has hired war workers to drive the bus, paying them regularly hourly wages. This is a small plant. One shift of employees gets off the trolley, boards the bus, is driven to the plant by one of its

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own men, who then goes to his war job. The shift that quits furnishes a driver who takes the bus back to the trolley—each driver is paid for three hours daily by the trolley company.

Staggered hours postpone the day of reckoning by releasing motorbus equipment for hauling employees to outlying war plants in the off-peak hours.

That requires staggering of war work hours to an extent that was considered impossible a few months ago. For if a shift starts at 6:30 or 7 A.M. instead of at 8 o'clock, it may make it necessary for mothers to get up at 5 or 5:30, get the breadwinner off to work, and then cook another breakfast for the children. War plant personnel men had often reviewed the advantages in such staggered hours, but found that the disadvantages outweighed them—one disadvantage was that if employees decided that working hours were unreasonable, they could get another job.

THE war plants located some distance from the city managed to handle their 1942 employee transportation problems by chartering motorbusses to bring them from railheads. Not only utility busses were used, but many school busses in adjacent communities, available after the children had been taken to or from school. With more and more of their employees being women who had no automobiles, the beginning of the end of charter busses was in sight when the staggered-hour plan went into operation, releasing more utility busses. Danger of losing employees was largely eliminated when all war plants adopted the schedules together. Also, in January, man power was put on the permit basis, whereby a war worker who wants to quit must give cause and get clearance from man-power authorities.

Because southern California is so thoroughly geared to the private automobile, conversion from trolleys to motorbusses has not come as quickly as in other sections of the country. But at Pearl Harbor, the transit companies were right in the middle of conversion; and for war transportation, this has turned out both good and bad.

On the good side, they had more motorbuses than would have been available a year before. And on the bad side, some of the rail lines had been abandoned and torn up, sending to the scrap pile many tons of rails that may be badly needed before the war ends.

IF the worst comes to the worst, enough rails of some sort will undoubtedly be found to rebuild necessary lines to war plants—they will have to be found!

But, meanwhile, transit men and regulatory officials agree that good balance between rails and busses is the objective to be kept in mind, whatever comes. As long and as far as possible, war workers will be carried on rails, with the coaches taking up the slack, and furnishing service beyond railheads. The busses are the flexible safety valve.

And, above all, both transit men and regulatory officials have learned that this game is played best by waiting to see which way the cat is going to jump next—and getting from the animal as much information as possible, along with some coöperation.

The Martyr of Huntington

Story of the picturesque struggle of the mayor of the Indiana town who battled long, but in vain, for municipal ownership.

By JONATHAN BROOKS

Of all the grotesque struggles between private and public ownership, perhaps the weirdest took place in and around Huntington, Indiana, between 1933 and 1943. It attracted more headlines in proportion to population involved, which was about 13,000, than most other battles on this issue. It caused a mayor to serve three long jail sentences, which might have made him really a martyr. It did less damage to private ownership as a theory and practice, and more harm to public operation, than almost any other struggle, but it proved the extreme tolerant indifference of the American public and that item may be of some value to the social historian.

The battle proper began on January 1, 1935, and lasted four years, or throughout the term of Mayor Claire William Hobart Bangs. The prelude was set in 1933, and an epilogue wound up a sultry performance on January 1, 1943, as noted recently in PUBLIC UTILITIES FORTNIGHTLY. To put first things first, the prelude:

Besides practicing international and maritime law, the future mayor was managing a building and loan association and editing a newspaper which he had picked up for a song just before it failed. In the course of his business he became embroiled with some banks. As a result of that he conducted a newspaper campaign against banks, bankers, and banking which may or may not have caused the runs which embarrassed the local banking houses to the point of death. Sued for malicious slander, he was lodged in jail until he could furnish bond. Then he hurried back to his sanctum to tell the world what he *really* thought of banks.

He arrived at his newspaper office just in time to find the servicemen of the Northern Indiana Power Company cutting off his gas and electric connections for nonpayment of bills. The company's excuse was that he had not paid his bill for four months. But the fact that the company cut off his service could not foil or thwart him. Using hand-set type and hooking up a Ford

tractor to his little press, he managed to get out an edition of his paper, late but vitriolic. His wrath was now turned against the power company. The banking ogre vanished into thin air! In no time at all he found some popular response to his attacks on his newly discovered enemy, where his antibank campaign had been a dud.

ANNOUNCING his candidacy for the Republican nomination for mayor in 1934 on a municipal ownership platform, he won first the nomination and then the election. After his triumph on election day he announced he would start municipal electric operation on January 1, 1935, the day he took office. Huntington owned its street-lighting system and its waterworks, generating power in a small and run-down steam plant. Stand-by service from the company, at 1¼ cents per kilowatt hour, was relied upon of necessity, rather frequently.

The mayor-elect ordered some transformers and other materials, about $10,000 worth, on his own authority, and a supply house delivered them before he took office. He employed a capable and reputable superintendent, from another Indiana city, this man having been available solely because of the result of the same November elections. The superintendent was horrified, when he landed in Huntington, to find that the mayor expected, merely by hooking on all the customers he could find to his little generating plant, to operate a real municipal utility. There was current in those street-lighting lines, the mayor explained, and it was only necessary to connect the customers! Plant capacity, or the lack of it, meant nothing to the mayor at that time. When the superintendent inquired about their legal position, the mayor reminded him that *he* was an attorney.

ON January 1, 1935, city employees, reinforced by miscellaneous floating linemen, began tearing down company meter connections, and stringing wires from the street-lighting system to houses and stores. Customers were not hard to obtain, because the mayor, in his newspaper, had made it clear that the company was charging more for current than was charged in Fort Wayne, a city of about 100,000 people, only 24 miles distant. This was wrong, he maintained, because the company, he said, carried its current through Huntington, to sell to a company in Fort Wayne which was in competition with the Fort Wayne municipal plant. The fact was that the company supply came chiefly from Fort Wayne. However, the mayor proposed to sell the municipal current at or near the Fort Wayne rates.

On January 2nd, the company asked a temporary restraining order. But the mayor could not be located for ten days for service of the summons. In the meantime his men continued connecting customers. The company asked the prosecuting attorney for John Doe warrants, in an effort to apprehend the linemen tearing down its lines; but the prosecutor did not feel he should get mixed up in the matter.

Service finally was obtained on the mayor by a persevering sheriff, and, at the end of three months of litigation, the company obtained an injunction. Meanwhile, however, the mayor kept his crew busy hooking up more customers. And he went right ahead after

the injunction was supposed to be in effect! The company, in desperation, filed charges of contempt of court. Proof of contempt was unquestionable. So the mayor, either to be a martyr or because he could not obtain bond, went to jail, where he was busy for 101 days, interviewing himself for his own and a Chicago newspaper on the subject of municipal ownership!

When the novelty wore off, and the headlines dwindled and disappeared, he tried a writ of habeas corpus; but the supreme court of Indiana, having already been through all the law in the case, refused to grant one. Finally he arranged for bond of about $4,500, signed by some eighteen bondsmen and obtained his release. And the city continued in the business! With freedom, however, his troubles increased.

His city attorney rebelled and resigned. Then his superintendent also grew weary of trying to keep clear of the law, and likewise resigned. His managing editor became worried about several aspects of the situation and also walked out.

Another short term for contempt of court did not slow the mayor down perceptibly; but when his own city council voted, 5 to 2, for impeachment on a long list of charges by his former city attorney and superintendent, his pace diminished. He contrived, however, to prevent impeachment proceedings.

From that point on he came out strongly for law and order.

To achieve his municipal plant goal peacefully he filed an appeal for a loan and grant of about $750,000 with the PWA. That body checked the law covering the situation and pigeonholed the application; whereupon the mayor came out with his biggest and blackest headlines denouncing the private company, charging it with blocking his municipal plant program *right in the government's own offices.* But the PWA action did not stop him.

Following this setback the mayor set up a private corporation and undertook to induct it into ownership of the city's system; but that effort failed also, primarily for lack of funds among his incorporators. By this time, all customers were off the city's street-lighting system, and the mayor transferred his energies to bigger fields. He announced himself as a candidate for the Republican nomination for governor of Indiana. Failing to secure presentation of his name to the convention, he turned his attention once more to his home town.

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¶ "[Indiana] *began state regulation of public utilities in this state in 1913, permitting all companies holding local franchises to surrender them to the state and to enter into new contracts with the state (indeterminate permits) in their stead. If a municipality wishes to compete with an existing utility, it must obtain a favorable vote of the people; its council must make a declaration that the public convenience and necessity require such competition, and the utility holds the right to appeal that declaration to the courts.*"

STILL denouncing the electric company, he announced his candidacy for the Republican nomination for mayor, and was defeated. Then, in the fall, he announced himself as an independent candidate on a citizens' ticket pledged to municipal ownership; and was once more defeated. His term as mayor ended, but not his troubles.

Going back four years, it will be remembered a supply house furnished him about $10,000 of materials on his verbal order before he became mayor. It never received its money, and applied for a receivership. The petition was granted, and his original city attorney became attorney for the receiver. They rounded up all the supplies used in providing service for some 500 customers; and then sought to find $4,300 of cash, noticed of record by the state board of accounts. It had disappeared mysteriously.

The receiver hailed the former mayor into court at Fort Wayne but he denied knowing what had become of the money. Remanded to jail he languished *sans* headlines, *sans* glory. After three months or so, an awkward situation developed. When the mayor was in the Huntington county jail, the power company had to pay the bill for his board by the sheriff. But the company was not interested in his meals in Allen county, not being a party to his lodgment there. Huntington county did not care to pay, either, and the receiver was running short of funds. Naturally, too, Allen county taxpayers had no desire to stand this expense.

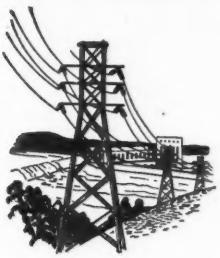
The troublesome financial problem was solved, however, by the judge who finally ordered the ex-mayor's release.

THE former mayor got home in time to try a lawsuit arising out of his municipal plant undertaking. The receiver sued several former customers of the one-time mayor's light system for nonpayment of bills. He defended them unsuccessfully but his defense, as might have been expected, was unique. He maintained that the courts had ruled, over and over, that the city never operated an electric utility legally; that it, therefore, never rendered legal service, and so could not legally charge for the service it did render.

But that is not all. Damage bond suits, involving the $4,500 damages in the contempt cases, lingered long on the Huntington County Circuit Court docket. Twice the ex-mayor offered a compromise settlement, but both times negotiations fizzled out.

The company finally accepted a "compromise" payment of a sum that did not cover its costs and attorney fees.

That is the story as the public saw it behind the headlines. Sincere advocates of public ownership have been embarrassed tremendously by the untoward events at Huntington. Believers in private operation, on the other hand, have perhaps unfairly used it as an example of procedure when politicians take control. Public operation could hardly be as witless as the Huntington experiment; certainly it could not often be as defiant of *all* law and order. This must be just as true as it is that the company could not be guilty of the awful charges of extortion, coercion, conspiracy, bribery, drunkenness, etc., etc., that were hurled at it in black ink running sometimes as high as 288-point. (Four inches, to you laymen;



Electricity in Huntington

". . . the city of Huntington in the early nineties supplied electric lights for a skating rink. In 1915 it asked the public service commission to approve a bond issue, the proceeds of which were to set up facilities for service to private customers. The issue was approved, but never used. About 1929, the city asked for a certificate of convenience and necessity, but the commission denied it."

eight letters in an 8-column line.) If private industry could be guilty of, say 10 per cent of the wrongs, torts, and misdemeanors charged in this case, it would be out by next Christmas!

THE law about which this case turned for four hectic years apparently is not local to Indiana. We began state regulation of public utilities in this state in 1913, permitting all companies holding local franchises to surrender them to the state and to enter into new contracts with the state (indeterminate permits) in their stead. If a municipality wishes to compete with an existing utility, it must obtain a favorable vote of the people; its council must make a declaration that the public convenience and necessity require such competition, and the utility holds the right to appeal that declaration to the courts.

This provision was necessary to protect utilities giving adequate service and abiding by state regulation as to rates, etc. But the city of Huntington in the early nineties supplied electric lights for a skating rink. In 1915 it asked the public service commission to approve a bond issue, the proceeds of which were to set up facilities for service to private customers. The issue was approved, but never used. About 1929, the city asked for a certificate of convenience and necessity, but the commission denied it. Again, about 1934, the city supplied electric lighting at a CCC camp near a city park, and the mayor in his mad career relied upon that as evidence that his street-lighting system was a public utility. Even so, he deserted the courts momentarily to ask the commission once more for a certificate of convenience and necessity. It was denied him.

THE mayor's vain effort to establish the city's right to do business as a public utility in the electric field brought from the supreme court of Indiana this final summarized word:

"Where a city was granted a franchise to furnish electricity for commercial purposes, but made no effort to exercise the right by serving the public for more than twenty years, and had permitted a private company to serve the public in the city under an indeterminate permit for a long period, it thereby lost the right by nonuser.

"Where a city made no effort for twenty years to furnish the general public with electricity for domestic and commercial purposes, loss of the right because of nonuse would not be affected by the fact that it did furnish electricity on isolated occasions for a consideration.

"Where a municipality, operating an electric plant for the purpose of lighting its streets and public buildings, permitted a private corporation to sell electricity under an indeterminate permit for many years, and then applied to the public service commission for a certificate of convenience and necessity to sell electricity for domestic and commercial purposes which was denied, it could not thereafter claim the right under a franchise granted prior to the private company's permit but never exercised.

"Provision for forfeiture of a light utility's franchise 'whenever it shall have abandoned the use of their said plant for one year' held not violated by ceasing to operate the generating plant and bringing current from outside the city limits, the service not having been abandoned."

NUMEROUS Wisconsin, New York, and Federal cases, as well as Indiana decisions, were cited in support of these interpretations, the supreme court upholding the trial court's injunction ruling.

Later, in its ruling on an appeal against a finding of contempt of court, the supreme court said:

"The question at once arises: Was Bangs representing the city of Huntington in any official capacity? It is not one of the duties of the mayor of a city to act in violation of law. . . . There is on file in this action a petition to dismiss the appeal, based on statements and writings of the appellant Bangs, in which he spoke in the most contemptuous manner of the order made, and of his purpose to ignore the order, or any other order, that might be made by the trial court, or any court."

That the public, even including his home-town folk, at long last understood the basic legal situation is indicated perhaps by an *Indianapolis News* editorial typical of many appearing throughout Indiana near the conclusion of hostilities:

"Mayor Bangs has been at odds with the franchise-holding company for many months. Even before he won office he had his troubles with the vendors of electric current. . . . Even a season in the hoosegow left him undaunted. He still aspires to show what he can do in the electric power business.

"Every way the aspiring mayor turns, he encounters property rights. He finds that the American people long since decided that the rights of property owners should be protected and that property cannot be taken without due process of law. Even utility prop-

erty, in which a substantial investment was made under authority of law and in expectation of profits assured by law and protected by the public service commission, is, he found, safeguarded.

"He can have his own way, it appears, only by forcing an amendment of the Federal Constitution and then working down to the Bangs plan. This may indicate that he is wrong, and probably does to all but a few, but apparently he is not dismayed."

Slogans and the War Effort

THE zest with which American workmen have tackled the job of outproducing the Axis is illustrated by the slogans they write to speed the job along. Most of the slogans stress the importance of speed, the danger of absenteeism, the perils of inefficiency, and the need of working hard, buying bonds, and keeping a silent tongue.

War Production Drive headquarters encourages labor-management committees in war plants to conduct slogan contests. Prize-winning slogans are usually forwarded to War Production Drive headquarters. They are selected as the best by committees of plant workers and not by any government agency. Some of the recent prize winners, listed below, show the feeling of the American workmen:

"He Who Naps Helps the Japs"—Westinghouse Electric & Manufacturing Company.

"If We Equip Them, Our Boys Will Whip Them"—Addressograph-Multigraph Corporation.

"Produce! Produce! Produce! And Cook the Axis Goose"—A. M. Byers.

"He Who Relaxes Is Helping the Axis"—Guibert Steel Company.

"Save on Scrap and Get Your Jap"—American Steel & Wire Works.

"A Plane Every Eight Minutes in 1942"—Goodyear Tire & Rubber Company.

"You Listen, Let Production Talk"—Sandusky Foundry & Machine Company.

"Minutes Saved Here Mean Lives Saved There"—Arma Corporation.

"America Coördinated—the Enemy Eliminated"—Lamson Company.

"All Out Now—Or All In Later"—American Steel & Wire Company.

"You Can't Sit at Ease to Beat the Nipponese"—American Steel & Wire Company.

"Your Boner Can Cost a Bomber"—United States Rubber Company.

"Not Defense—But Over the Fence and at 'em"—W. J. Voit Rubber Corporation.

"Pass the Schedule, Not the Buck"—Combustion Engineering Company, Inc.

"U-tmost S-peed A-head"—General Radio Company.

Post-war Planning For All Transportation

It appears likely, declares the author, that transportation would be the first field for experiment in the "New Capitalism" advocated for post-war America, if the recommendations of the recent National Resources Planning Board report should be adopted by Congress.

By T. N. SANDIFER

Is transportation to be the first field for experiment in the "new capitalism," advocated by some for post-war America? It appears likely, if recommendations of the recent National Resources Planning Board report, "The Future of Transportation," should be adopted by Congress.

The White House transmitted this document to the Capitol, where it was received as something for further reference, but not immediate action. Such, in fact, appeared to be the purpose in sending it to the legislators. It derives weight at this stage for having been made under supervision of Owen D. Young, as chairman of an advisory group.

This report advocates a complete modernization program for the entire transportation system of the country, with integration—some of it compulsory—of existing rail, air, water, and motor lines, and their operations geared to regional demands as projected in the report. This would be accomplished under supervision of, and with the assistance of, a super-Federal regulatory agency. This new agency would override present Federal and state organizations having jurisdiction, and would administer a combination of private management and government, if not outright partnership, for the purpose.

The proposals in general have been received in the business world with mixed feelings, some more conservative quarters seeing any such move as the entering wedge of government ownership of transportation. A more optimistic interpretation of the projected program is that if there must be public spending for reconstruction, government activity as a banker is not

without its favorable points. There is a hint of a reversion to the original Hoover version of the Reconstruction Finance Corporation function in the suggested rôle of government financing.

However the undertaking might be attempted, there is little question at the current stage but that "planners" have the transportation field down in their books for post-war attention. It is listed by the National Resources Planning Board among public reconstruction activities for that coming period.

THE underlying philosophy of the report on transportation, and what would be done if its recommendations are followed later, is closely paralleled by Stuart Chase, in his "Goals for America."

"Employ the profit motive as widely as possible," he says. "Encourage businessmen to do all they can, and to take the responsibility wherever they can. The critical point is to have in the Federal government a conning tower control charged with the duty of plugging any gaps in the front of full employment."

That is, perhaps, a milder version of what the "planners" have in mind. Whatever the approach, however, there is no doubt that they want to attempt something, as the following passages from the report indicate:

"Plans for post-war development cannot be considered apart from the necessity of completely overhauling the basic transportation facilities of the nation. This physical reconstruction, combined with service and policy revisions, must aim not only at modernization but at the ultimate realization of a transport industry which will permit each mode of transport its economic functioning as an integral part of the whole system. Such a system, moreover, must be encompassed in the broader plans for the entire post-war economy."

This would seem to establish definitely the intention to give transportation a working over, if opportunity is afforded. The report complains that while Federal spending for provision of transportation facilities amounts to a billion dollars annually, there is no machinery for coördinating this activity "to the end of providing the most efficient transportation system best adjusted to the needs of the nation"; furthermore, that

"Federal promotion of transportation operating through separate and independent agencies which act as special advocates of one medium or another is at once the most significant force in transport development and the most poorly coördinated phase of transport policy."

Hence, the report maintains, "Integration of planning and development is essential to an orderly guidance of the Federal government's investment program."

THE report neglects to itemize the figures in this claimed investment; presumably such things as airport development, which has been more and more a responsibility of government finance, air-mail subsidy, and similar output, are included in the figure. What the report proposes to have the government do under the heading of further investment is however, made clear. First, though, to meet the charge of too many separate agencies, it recommends a National Transportation Agency,

The Civil Aeronautics Authority

"IT [CAA] came at a stage in aviation development when things were getting more chaotic every day, and when one serious accident after another had virtually scared off the potential air-traveling public. The CAA functioned less than two years as an independent, single agency regulating commercial air operations."

which would absorb existing development agencies as mere divisions of the larger, new establishment.

Something is to be said, according to conservative viewpoint, in favor of one single responsible Federal agency over all transportation. The administration tendency here, as in many other cases, is to pile on layer after layer of regulatory functions, each of a different color perhaps, but all competing, or interfering, or just resting, on each other. A single agency, of whatever name, would appear to have its advantages.

The Civil Aeronautics Authority may be remembered, in this connection. It came at a stage in aviation development when things were getting more chaotic every day, and when one serious accident after another had virtually scared off the potential air-traveling public. The CAA functioned less than two years as an independent, single agency regulating commercial air operations. In that time, however, it was credited largely with the near-miraculous nonaccident record, the first period of complete prosperity and unbroken progress aviation had known. Commercial aviation appeared headed for an even better era. Cutthroat competition had been eliminated, rates were stabilized and maintained in a fair pattern, air-mail subsidies worked to provide ever-improving equipment, and the industry appeared completely happy under its benevolent regulating agency.

ALL this changed abruptly when CAA was disrupted in a sudden reorganization that has not been clearly explained to the present day. The most appalling series of accidents in air travel history followed in rapid succession. Whether these were coincidental or not, the fact was they didn't happen under the old CAA. The war

cut through the situation that was then developing, but which up to that stage was rapidly leading back to pre-CAA conditions. Incidentally, the current civil air regulation, in its multiple-headed agency form, would be again changed if the National Resources Board recommendations were adopted —like other regulatory agencies it would come under the new Federal set-up proposed by the Board.

Whether the latter would duplicate for all transportation in the post-war period, what the CAA did for air in the golden year and half it functioned is of course a comparative speculation. A loose parallel may exist in the transportation field after the war, to the condition which CAA was designed to correct in the air when it was created.

INDEED, the National Resources Board predicts as much.

"In the two decades since 1920 (when the Transportation Act of 1920 was passed) there has occurred," it reported, "a revolution in transportation. No longer may it be said that the domestic transport problem is merely a railroad problem, or that public policy can concern itself solely with the railroads.

"Today the railroads, though still the backbone of the freight transportation system, are but one of several major forms of transportation, and the problems which beset them are no longer attributable to a passing disruption of cost-revenue relationships but to the development of new and vigorous competitors. Advancing technology has promoted in the highway, waterway, pipe-line, and airway fields, formidable rivals for the railway industry."

The report stresses that "the war has given tremendous impetus to the development of aircraft on a mass-production basis," and it is obviously preoccupied with the possible effects of competition between commercial air operations and those of older forms of transportation.

"Technical advance in air transport has been phenomenally rapid," the Board observed. "For common carrier service, larger and speedier planes have been continually introduced . . . economical cargo planes are in the near future . . .

"After the war enormously expanded productive capacity must seek outlets in both commercial and private air transport, and reductions in first cost will greatly reduce fixed charges. The sphere for economical plane operation will expand rapidly, and the major problem will be the provision of adequate landing fields to accommodate the increasing traffic."

SOME of the possibilities forecast in the Board's study included:

"AIR TRANSPORT: Not only lacing the country with passenger, express, and freight-carrying airlines and private planes but circling the globe with distance-shattering schedules—backed by capacity to build more than 100,000 planes a year. All the airlines in the country owned only 350 transport planes before the war and have carried from 10 to 15 per cent as many passenger-miles as all the Pullman cars. Little imagination is required to picture a rapidly developing industry that will both create new transportation and make inroads upon the traffic of its competitors, especially the railroads.

"MOTOR TRANSPORT: Resurgent after the lean years of rubber and gasoline rationing, with completely new

¶ "THE *report* [*National Resources Board*] *complains that while Federal spending for provision of transportation facilities amounts to a billion dollars annually, there is no machinery for coördinating this activity 'to the end of providing the most efficient transportation system best adjusted to the needs of the nation.'*"

productive capacity and new designs in automotive equipment freed from the shackles of the past; new interregional highways and urban express routes planned for construction in the transition period to take up the slack in employment.

"INLAND WATER TRANSPORT: Expanded in scope and volume and reëquipped with new and more efficient towboats and barges.

"INTERCOASTAL AND COASTWISE WATER TRANSPORT: Restored to normal routes and augmented in tonnage by accessions from the emergency merchant fleet.

"PIPE-LINE TRANSPORT: Expanded by the exigencies of war and backed aggressively by parent companies starved because of their dependence on more vulnerable water transport.

"RAILROAD TRANSPORT: Flushed with the traffic gains of war through diversion and full employment and striving energetically to hold these gains against resurgent rivals."

ACCORDINGLY the Board foresees further that widespread changes must be undertaken—"a major objective for the future must be a lower level of rates and fares in the transport industry to place the rate structure in a more favorable position with respect to other prices"—terminal installations must be culled and modernized. The report terms this the "most neglected aspect of transport development."

Much of the railroads' physical structure will require modernization, including besides rebuilding and relocation or consolidation of terminals, the replacement of much rolling stock with new cars and more efficient locomotives. Even so, the Board found, things the roads themselves have done have enabled them to "now offer a standard of service hitherto unequaled."

A catalogue of changes listed as imperative for post-war efficiency indicates that the Board sees need of extensive Federal aid; in addition, the Board held that many changes it proposes would never be made voluntarily, and probably will have to come through some outside pressure.

On the possibility of such rail consolidations as it sees necessary, for instance, the Board commented:

"Unfortunately, the chances of securing significant rail consolidation by voluntary means are poor. Active opposition by established carrier managements, employee groups, investors, localities likely to be affected, and other interests, places difficult hurdles in the path of even minor consolidations."

IT is when the Board gets into projected handling of these problems, however, that such features are discovered as the argument in its report for public ownership of all transportation, pointing to inherent differences and difficulties in transportation financing of the present or past era.

"Under existing investment conditions," the Board stated, "these differences in supplying capital may balance well enough for all practical purposes to insure equity, but because of changing circumstances the ultimate solution may lie in the public ownership or leasing of all basic transport facilities, with the railroad fixed plant placed in the same category as public highways, waterways, and airways and paid for according to use. This step would establish a basis of equality in the provision of all transport facilities. Likewise, it would overcome the difficult problems arising from the railroad's burden of fixed indebtedness, for the user charge would be based on volume of traffic, thus substituting a variable for a fixed obligation. In addition it would permit more effective provision of transportation plant because it would facilitate joint use of rights of way and structures, coördinated terminal arrangements, and over-all plans directed to transportation requirements as a whole.

"STILL another advantage of public ownership or leasing of all the fixed transportation plant would be realized in connection with emergency public works programs which now apply only to highways, waterways, and airways. In the future the extension of such programs to the railroads would have the advantage not only of creating a more competitive condition, but of tapping a large new reservoir of useful and needed construction projects. The tremendous task of planning adequate public works for the period of transition from war to peace cannot be successful in the field of transportation unless it comprehends all transport media. This is the central problem of public development policy. Its solution will require social inventiveness of a high order, a willingness to face the issue, and ingenuity in contriving devices, whether they take the shape of public ownership of the railroad fixed plant, public leasing of that plant, joint public-private investment corporations, or other measures."

Problems of Production

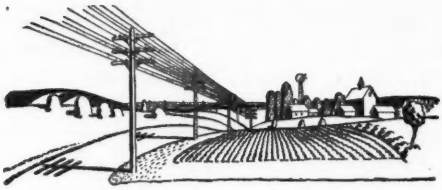
"THERE *isn't any problem that can't be licked. There are still a lot of refinements to be made, but we're getting there. We're on the road and we've solved most of the major problems of production.*

"What do they mean by 'getting tough' in this town? If toughness means being noisy and blustering, foot stamping and swearing and desk pounding, then I'm not tough. My ways are not blustery; I'm simply not that kind of person. But if being tough in this town means getting a job done, then I am tough—because the job is getting done. And if getting a job done calls for hitting people over the head and flattening them out, I can do that, too—and I have.

"I believe in setting the objective, getting the most capable men to reach it, sticking to it, and getting there.

"That's my idea of being tough."

—DONALD M. NELSON,
Chairman, War Production Board.



Winters, the WPB, and the "Freeze"

Scarcity of materials has caught a number of cities and towns in a difficult position by reason of outstanding obligations to go ahead with municipal plant programs.

By WILLIAM H. GRAY

DEEP in the heart of Texas is the little township of Winters, population 2,500. Obviously not big or important as towns go. Yet, it is a fairly typical town of its size. Certainly it is typical of a number of big and little towns which decided to build and operate their own electric business but got caught by the war emergency. Multiply the headache of Winters, Texas, by scores or more of other cities and towns trying to build or improve their municipal electric plants under the shadow of war priorities, and you have quite a sizable headache even for this great star-spangled land of ours.

Shifting the nation from peacetime motion into the full speed of war gear primarily is a matter of governmental leverage. This, in itself, is rather gigantic and complex. But in the multiple mechanisms within the nation—actual community problems—the great transition from a peaceful pace to a war stride is seen vividly, felt keenly.

Being converted for rough traveling in its new business of belligerency, the nation rips along the road of war with surprising effectiveness. True, the rubs and squeaks are plentiful in the nonvital parts. The overhauling job, however, brought about extensive trimming here and there—a stripping of nonessentials to meet the general emergency.

When experts of the War Production Board upset for the duration a pet municipal project of Winters, a most interesting close-up of a municipal war casualty was provided. Nationally, it was something altogether insignificant. Locally, it went *bang,* bringing a rattling jolt that knocks to the tune of about $500 monthly. That's not hay in a small community.

But specifically:

The town of Winters is paying $510.49 in interest monthly on bonds for the construction of a municipal

power plant that is *not being constructed*. On March 12, 1942, Washington's War Production Board pulled a war lever that froze to an ice-like stillness the little cotton-farming city's biggest municipal undertaking. But the order, of course, did not freeze the bonds, and therein is the rub.

TODAY a brick skeleton of a building stands arched over by steel beams and appears ghostly with its gaping window apertures. It rests beside an artery highway, surrounded by a bumper crop of winter-seared weeds. Actual warfare could add but little to its forlorn-like atmosphere. Paradoxically it is a scene both of defeat and success: Defeat in a local sense, success on a national scale.

Power-line poles are in the ground about the town, but the wire that was to be strung on them went to Army Engineers. The dynamos that were to produce the "juice" are somewhere whirling out energy for a Navy enterprise. The town still takes its electric energy from a utility distributing company 50 miles away.

The mayor and aldermen of Winters, determined to execute the will of a slight majority of citizens who favored the municipal plant in a 1941 bond election, did not take the WPB action sitting down. They interested the newspapers of the larger towns of the region and eventually attracted the attention of the widely syndicated "Washington Merry-Go-Round" daily column.

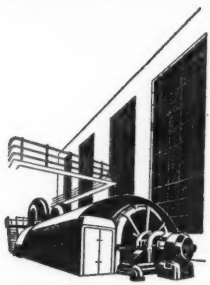
The Winters "utility situation" represents a specific and localized "squeak" in the national war machinery. But taxpayers of the little town of six thousand call it a "shriek."

WINTERS takes its livelihood from southern and western industries —cotton and livestock. Its mayor is a typical live-wire American, owning a typical sort of drug store and possessing an "average" American name: Smith. He is thirty-five and perhaps that explains some of his aggressiveness in bucking the WPB and seeking to get a home-owned power plant for his native town, once realization of that ambition had come so near at hand. Mayor T. A. Smith was born on a farm near the town.

It is from many angles that the "Winters case" could be told: From the standpoint of the municipal officials, from the view of the War Production Board, from the interest of the West Texas Utilities Company, a subsidiary of the Midwest Utilities, or as seen by the bloc of townfolk who opposed the plant in the beginning and finally lost in the close bond election. The dissenting group counts in its ranks the town's newspaper editor, once mayor himself and staunchly opposed to the project.

Because the city's governing body represents the affirmative of the matter in regard to the balked enterprise, it is from the mayor's and council's standpoint that most of the news accounts have been recited.

A CASE history of the frustrated municipal power plant undertaking would begin three years ago when a group of residents signed a petition calling for a bond election. The petition was defective and it was not until last year that a legally sound petition was filed and voted on. On July 15, 1941, a bond issue of $175,000 was favored. The vote was 181 for, 131



Construction of Municipal Power Plant

"THE town of Winters is paying $510.49 in interest monthly on bonds for the construction of a municipal power plant that is not being constructed. On March 12, 1942, Washington's War Production Board pulled a war lever that froze to an ice-like stillness the little cotton-farming city's biggest municipal undertaking. But the order, of course, did not freeze the bonds, and therein is the rub."

against. Wasting no time, the city mayor and aldermen let a contract November 15, 1941, to the Universal Electrical Construction Company for a turn-key job. The city was to get its "package" of power wrapped up and ready for service within 300 working days.

While it had dilly-dallied for more than three years in getting the project of home-owned energy started, the town of Winters, functioning through its council, was thereafter almost feverish in its efforts to get its plant. In four months, it had settled upon a contracting firm, waded through heaps of plans and specifications, decided upon a final set of plans, and at last witnessed work under way. Building of the plant started November 29, 1941.

But a day that was to put a stop to this was only around the corner. It was December 7th, the date the infamous sneak raid was to blast Pearl Harbor. With contract let for $160,000 and $15,000 of the bond money set aside and earmarked for incidentals and for payment of interest on the bonds until the plant would provide revenue, the council had no choice but to go on with its plant.

BECAUSE the crux of the priorities provisions was the inability of the supplier to restock after selling vital materials, the supplying firm's problems of restocking Winters plant parts also became the Winters council's problems. So, on a priority "trouble-shooting job," Mr. Smith went to Washington. He was accompanied by a Dallas engineer, W. O. Coe. They submitted their requests to the WPB officials for needed priorities for the firms providing the contractor with the vital supplies.

"We received promises of assistance and returned home," the mayor recounts of the February trip.

But there was a March trip—and the plant construction shutdown.

Invited to come to the capital and appear before WPB officials for the purpose of showing where materials had been secured and establishing why the project should be continued, Smith and Coe, accompanied this time by a representative of the construction company, made another visit to Washington. In the office of J. O. Moore of the compliance section of the WPB, the three arrived to present the case and disclose the papers to reveal sources of materials on hand and bought. Notified after a "somewhat hurried interview" during the morning of March 12th to reappear at two o'clock that afternoon, the group returned accordingly, Smith relates. At 4 P.M. the mayor was notified by the WPB that a wire had been sent to him, addressed to Winters, "a few days ago," ordering construction to be halted. That is Smith's version of his experience March 12th in Washington.

MYSTIFIED, the three departed but, in conversations later in the month with WPB officials, the mayor contends that he was given a verbal assurance that their records were clear and that the compliance section would file a report on the matter soon, most likely favorably. The report came April 10th. It was unfavorable—definitely in the negative.

The council claims to have paid for 90 per cent of the cost of the three engines and the three generators in November of 1941, the contractor ordering immediate delivery. Made to specifications for the Winters structure, delivery of the engines and generators came in March, but the supplier had no authority to replace the items. Forthwith, the WPB authorized the Navy to pick up the engines and generators and gave permission to the U. S. Army Engineers to take over the 18,000 pounds of wire on hand at the Winters plant. The wire had arrived early in the year. Reimbursements, of course, were made.

Today city aldermen, having expended $124,000 to the contracting firm and worked zealously toward "pulling the plant through," have washed their hands for the duration. They had even sought to buy out the distributing system in Winters from the West Texas Utilities Company in Abilene when stymied at Washington on the construction program. Counsel for the West Texas Utilities, however, advised the company's manager that the proposal did not constitute a valid offer. He reasoned that the town had no authorized funds with which to purchase the distributing system and at the same time had outstanding a "purported contract to pay for the construction of a competing system."

SUCH perhaps are the exigencies of war.

The mayor and councilmen feel, however, that they have gotten the "Washington run-around."

The opponents of municipal ownership check off the matter as "bad business from the start."

The West Texas Utilities Company repeats its claim that there is sufficient power for all the territory sharing in its services and that the plant was not needed. It has, in a manner, chided the

town management for attempting to go through with the construction in war time.

Pearson and Allen, the Washington columnists, called it a "quiet piece of obstructionism" at Washington by certain members of the power division of the WPB. This, the columnists charge, is "undermining some of the things that the President has upheld most vigorously—public power."

The Winters city management trusts that the war will not last too long. As men responsible for their city's welfare, they are also hoping that the $15,000 in interest money will not be more than exhausted before construction can be resumed.

Rock, the Locomotive Fuel of Esthonia

ROCK, of all things, is the locomotive fuel in Esthonia. No other country uses this form of energy for her railway traction. Across the gulf northward, Finland uses wood for all but her faster trains where coal is used. In most western European countries either coal or electricity is the chief motive power.

The rock is oil shale. In color and appearance it is much like limestone, but it does contain 28 per cent combustible matter. It is quarried in northeastern Esthonia, just north of the large boundary lake, Peipus. "Petrol" is distilled from the "shale" for use in some of the state's railway motors. But most of the energy of this little country's trains comes from chunks of this gray rock with no processing other than quarrying it. The tenders contain chiefly this rock with a little wood for kindling. Ordinary "coal"-burning locomotives are fired with this after a little reconditioning. This is Esthonia's chief railway fuel.

The reason for its use is doubtless due to the fact that the nation lacks coal and has less forest wealth than, say, Finland. The residue, 72 per cent, is, of course, large, but this is no serious handicap in railroading. The "ash" is dumped where convenient or where needed, and helps to build up the grade somewhat. There is less soot than coal; the odors are apparent but probably they are no worse than the smell of coal smoke. On the whole this is a very satisfactory locomotive fuel.

Probably oil shale would not have been used at all if coal had been available within the country's boundaries. As a matter of fact, when Russia possessed this country, no one thought of using it. After the little nation won its independence, the trade barriers erected both within and outside the country made it desirable to use a local product if possible. Consequently, around 1924, the fuel was put to use on her railways, and it has been a wholly satisfactory source of power. The writer has covered the country from north to south and it seemed a good substitute for coal, probably much better than wood. Even in war times this rock has been put to use to relieve the need for coal in the countries which occupied it. Esthonia's pioneering might be helpful to other lands. Where oil shale is plentiful, but other sources of energy are not readily available, those regions may profit by this little country's example.

—ARTHUR C. SELKE.

Wire and Wireless Communication

A TOTAL of $7,609,914 was included in the Independent Offices Appropriation Bill for the Federal Communications Commission, which is $223,279 more than the 1943 appropriation and $479,686 less than the Budget Bureau estimates. The Committee on Appropriations has approved the Budget estimate of $2,000,000 for regular activities, which is the amount of the 1943 appropriation, and has allowed the total amount provided for the current year for national defense activities, plus such sums as are necessary to place certain personnel in the Foreign Broadcast Intelligence Service, departmental and field, and the law department (departmental) on a full-year basis. The committee added $227,279 to the 1943 appropriation for this purpose and denied additional funds requested for the expansion of other services.

The committee called attention to the provisions in the bill providing $27,840 for a hemisphere communications unit and $206,160 for a war problems division, under the law department. The committee had not eliminated these funds because they were requested as a national defense measure, but it regarded the value of such projects with some skepticism and recommended that the commission carefully consider the desirability of discontinuing them.

IN the course of consideration of the Independent Offices Appropriation Bill on the floor of the House on February 15th, Representative Wigglesworth, Republican of Massachusetts, vigorously attacked the size of the FCC appropriation. He said:

> It is difficult to escape the conviction that there is a good deal of duplication of effort between the FCC on the one hand and the Army and the Navy on the other. The Army, I understand, has thousands of people in its radio intelligence companies. The Navy also has its own set-up. The FCC admits that both services advised at one time that they did not require what the FCC was furnishing them. The Bureau of the Budget, in its testimony, recognizes the conflict.

Representative Cox, Democrat of Georgia, thereupon suggested that the amount of the FCC appropriation should be deleted from the Independent Offices Appropriation Bill and deferred pending the investigation of FCC activities by a special 5-man committee recently authorized by the House. However, Representative Woodrum, Democrat of Virginia and chairman of the Appropriations Committee, pointed out that the bill would not become effective until July 1st, during which time the investigating committee under the chairmanship of Representative Cox would have ample opportunity to apprise the Congress if there was any good reason why the FCC appropriation should be cut out or reduced.

Representative Wigglesworth also accused the FCC of seeking an unwarranted number of deferments from the draft by its employees. He said the record indicated a request by the FCC of 442 deferments, of which 391 had been granted.

Representative Cox, after suggesting that the background of Chairman Fly of the FCC did not fit him for his present post, said:

> . . . At the present time we find the Army and Navy subordinated to him, and if the committee had found it possible to have consulted the Army and the Navy, disclosures would have been made to it that Mr. Fly is a terrible handicap to them in his effort to dominate completely in foreign communications of the Army and the Navy.

THERE were further indications in the House that the FCC would be subjected to a double dose of investigation. This was seen as the result of the action by the House in setting up a select investigating committee of seven men by virtue of the Smith resolution (H Res 102). This committee, headed by Representative Smith, Democrat of Virginia, has broad powers to investigate rules, regulations, and directives of Federal agencies and to curb so-called "bureaucratic activities."

Inasmuch as the Smith committee was known to be contemplating an investigation of FCC practices, there was speculation as to whether it would not conflict with or duplicate the work of the special 5-man committee headed by Representative Cox, which has been directed by the House to investigate the FCC. It was believed, however, that Representative Cox and Representative Smith would work out a plan of action which would avoid any unnecessary duplication in the work of their respective committees. Incidentally, the House Committee on Accounts has approved an initial fund of $60,000 for the investigatory work of the Cox committee.

* * * *

THE House passed on February 10th, 201 to 56, a bill approving a merger of the Western Union Telegraph Company and Postal Telegraph, Inc., after protests that the consolidation would establish a "communications monopoly." The measure then went to conference for elimination of minor differences with a similar Senate bill passed early last January.

The House proposal does not stipulate, as does the Senate measure, that the companies must divest themselves of international operations. It did not, however, permit a separate merger of international facilities as authorized by the House-approved bill which died with the last session of Congress.

Representative John E. Rankin of Mississippi charged the companies had been piling up obligations and now wanted Congress to "bail them out" with taxpayers' money. He said:

> There never was a time when monopoly was striving harder to stick the American people. This bill would eliminate competition altogether. It represents monopoly at a dangerous time. We are told that the Postal Telegraph Company is insolvent. Then it should be made to go through a court proceeding the same as any other business corporation.

He said he was against government ownership of the telegraph industry, but favored some sort of government regulation.

The House and Senate bills also must be reconciled on provisions affecting post-merger employment of present workers. The Senate bill provided guaranties of five years' employment after the merger is approved for all employees hired before March 1, 1941. For employees of either company hired after that date, severance pay would be furnished.

The House made no distinction as to time of hiring, but provided instead that all employees "shall not be placed in worse position regarding the character of their employment" for a maximum post-merger period of four years. It specified, however, that no employee should be guaranteed employment for longer than the period of his pre-merger service.

* * * *

THE Board of War Communications on February 8th announced a new war-time priorities system regulating telegrams, effective February 15th, which abolishes the traditional priority for government over commercial telegrams and establishes instead "priority" and "rapid" preference groups.

James L. Fly, chairman of the board, said the new priorities would be limited to full-rate telegrams relating to the war effort and public safety, and estimated they would not cover more than 10 per cent of all telegrams. War industries and nonmilitary government departments will be permitted to file telegrams in either of the two preference groups. The military have their own uniform system of priorities.

The top preference rating of "priority" is strictly limited to messages involving immediate dangers due to the presence of the enemy; emergency communications in connection with actual military or naval requirements; hurricane, flood, earthquake, or other disasters.

The preference rating "rapid" is limited to messages which require prompt transmission for the national defense and security, the successful conduct of the war, or to safeguard life and property.

* * * *

On February 13th Donald M. Nelson, chairman of the War Production Board, signed the expected reorganization order establishing the Office of War Utilities. This was announced to the press on February 16th. Head of the new War Utilities Office, which has broad priority powers, was J. A. Krug, who will have the title of the Director of War Utilities. Edward Falck, formerly associated with the Consolidated Edison Company of New York city, was named deputy director under Mr. Krug.

The Office of War Utilities, which will handle the requirements for materials, limitations, and other emergency restrictions for all utilities, has four branches heading up under Mr. Krug. The communications services branch, having jurisdiction over the requirements of the telephone and telegraph industries, is directed by Leighton H. Peebles. Its personnel and policy will continue with few changes from the old independent WPB Communications Equipment Division. The power branch is headed by Barclay Sickler, formerly associated with the Bonneville Administration. The gas branch is directed by Martin Bennett, and the waterworks and steam-heating branch by A. E. Gorman.

* * * *

The Lexington (Kentucky) Telephone Company recently completed a full settlement in its agreement to remedy actions which led to a labor dispute almost five years ago, Burton W. Saunders, vice president and general manager of the company, said.

The United States Circuit Court of Appeals in Cincinnati on February 9th entered a consent decree under which the company agreed to stop alleged discouragement of membership in the International Brotherhood of Electrical Workers (AFL), offer reinstatement to seven employees, and reimburse four workers for $6,000 in lost pay.

Saunders said the complaint started in 1937. A National Labor Relations Board hearing in late September and early October, 1941, led to the company's agreement, he added, and a final settlement was reached late in 1942.

* * * *

Neither industry, nor labor, nor agriculture alone can provide prosperity when peace returns to this country, but government, in coöperation with private enterprise, can assure the stability of our economic life, Colonel David Sarnoff, president of the Radio Corporation of America, declared recently. He spoke at the February meeting of the chamber of commerce of the state of New York.

Colonel Sarnoff, who is on the inactive list of the Army Signal Corps Reserve, said the "old idea" of vested interest of labor, and the "still newer and more dangerous idea of a vested interest on the part of a government bureaucracy, must give way." He said:

> While I realize the important place which government must have in the picture of American industry, I plead for an "American Charter for American Business." If big business is a crime, businessmen are entitled to know it. What is declared lawful at one time should not at another time be upset by the caprice of bureaucracy. Laws

should be changed by legislation, not by bureaucratic fiat.

The accomplishments of science and industry, "expressed through the American competitive system of private enterprise," should be used to create employment for labor and capital and to stimulate national prosperity, he held.

He reviewed the nation's recent industrial gains and particularly the developments in radio and electronics, saying radiothermics promised to become a significant factor in post-war industry and that "the most spectacular development to which we look forward in the post-war era is television."

* * * *

THE Office of Censorship early last month issued new and consolidated regulations — approved by President Roosevelt—governing all communications entering and leaving the country. They replace separate rules adopted for postal, cable, and phone communications, and list information topics which cannot be mentioned in outgoing communications without appropriate authority because of their possible value to the enemy.

Director Byron Price said the list, wherever possible, parallels the voluntary code of war-time practices for the American newspapers. Information circulated widely in this country, he said, would be difficult to keep from the enemy.

All outgoing news dispatches as well as periodicals, books, private and business letters, cablegrams, radiograms, phone messages, and all other types of communications are covered by the provision.

* * * *

PATENT pooling and swapping industrial information are old stories to officers of the Signal Corps laboratories at Fort Monmouth, New Jersey. Major General Dawson Olmsted, chief signal officer of the Army, said recently patent ownership has never delayed procurement of communications equipment for the Army. "Long ago," he said, "we contacted all the industry and the Navy, and formed a patent pool that has saved the government many millions of dollars. If I do say it myself, the Signal Corps stepped out in front on that and got it lined up."

The communications equipment developed and displayed at the laboratories includes small, portable radiotelephone sets of limited range—the "walkie-talkie," command radio sets for air forces units, intraplane and interplane sets, field telephone equipment, headquarters and base telephone equipment for fixed installations similar to city service, small meteorological radio sets that broadcast weather information from rising balloons, facsimile reproducers—for radio or wire transmission — which reproduce negatives, positives, or print on sensitized paper — in Olmsted's words, equipment which "includes some of the most complex and intricate scientific and manufacturing principles that American ingenuity has been able to devise."

IT is precision equipment, but rugged in construction. Colonel Rex V. D. Corput, director of the laboratories and of procurement at Fort Monmouth, pointed this out by recalling public criticism of the Signal Corps a year ago for its failure to purchase commercial police squad car radio receivers for installation in tanks, rather than waiting for production of new equipment.

"I put one commercial set in a tank, and it was shaken apart in one mile—on a highway, not over rough terrain," he said.

Corput said one major problem in production of Signal Corps equipment had been quartz crystals, which are essential to precision control of frequencies on radio transmitters, and at the beginning of the war were produced in limited quantities by a small number of companies.

These commercial companies, each using its own process, would work on nothing less than perfect crystals weighing at least eight pounds, he said. Now, crystals of all colors, fineness, and size are used successfully.

Financial News and Comment

By OWEN ELY

$6,000,000,000 Lost by Investors Through § 11?

In these inflationary days billion dollar statistics are bandied about without much regard for statistical niceties. Hitler is costing the world $400,000,000,000, it is estimated by one authority. The OPA issues money-bag charts (some of which we reproduce) showing how they have saved $78,000,000,000 for the United States on war expenditures through 1943. On the other hand, President Roosevelt and Economic Stabilization Director Byrnes have been accused of raising the war cost by billions through the 30 per cent wage increase said to be embodied in the 48-hour-week directive. (The added cost of steel alone is figured at $100,000,000 by George Sokolsky.) The nation's annual war cost, which it was formerly thought would hit a ceiling around $70,000,000,000, now seems on the way to the $100,000,000,000 level—and the end is not yet in sight.

Wall Street used to be accused of juggling billions of dollars, but the total value of all domestic stocks listed on the New York Stock Exchange is currently only about $41,000,000,000. However, if we are to revive the normal workings of the capitalistic system after the war, the investor is worthy of some attention. This applies particularly to the utility stocks.

The above comparisons may be of interest. (They include both preferred and common stocks.)

While these periods may not be strictly comparable with respect to the character of the securities listed, the net changes seem relatively small: 40 utility operating company stocks were tabulated in 1943,

Market Value of Stocks on N.Y. S.E. (billions)

	Gas-elec. Operating Companies	*Gas-elec. Holding Companies*	*All Other Domestic Companies*
Jan. 1, 1930	$4.1	$3.7	$55.4
Jan. 1, 1932	2.4	1.7	22.2
Jan. 1, 1935	1.3	.9	30.7
Jan. 1, 1940	2.4	1.4	40.8
Jan. 1, 1943	1.7	.7	35.6

compared with 38 in 1930; 34 holding company stocks *versus* 35; and total domestic stocks were 1,220 *versus* 1,261. The net declines in market value during the period 1930-43 have been as follows:

	Billions	*Percentage*
Utility operating companies	$2.4	59%
Utility holding companies..	3.0	81
All other domestic stocks..	19.8	36

Utilities listed on the New York Stock Exchange probably include only about two-thirds of the total outstanding utilities (no accurate figures are obtainable)—the balance being traded on the Curb, on various interior exchanges, or over the counter.

By and large, the gas and electric companies constitute a successful industry—they have probably grown as rapidly as any other big industry in units of output, and in theory at least they are allowed to earn 6 per cent on the investment.

Isn't it fair to assume therefore that the percentage decline should (normally) not have exceeded that of all other stocks listed on the stock exchange, during the period 1930-43?

Industrial stocks reached their annual low in 1932 and have since recovered about 60 per cent. Had the two utility groups appreciated in the same proportion, they would now be worth about $6,600,000,000 instead of $2,400,000,000—a difference of $4,200,000,000.

The difference of nearly $4,000,000,000 appears to reflect a shrinkage in market values which can be fairly attributed to the administration of the Utility Act of 1935 and particularly § 11, which embodies the "death sentence." The above statistics were chosen to avoid the extremes customarily used by statisticians who wish to press home an argument.

Thus the 1929 highs and the 1942 lows were avoided—though such a comparison would have been far more effective for utility stocks.

It is true that the January 1, 1930, market prices still showed some effects of the inflationary wave of the 1920's; but this factor has been allowed for by writing down utility stocks in the same proportion as all other stocks in the intervening thirteen years.

THE immediate market effects of the Utility Act, passed in 1935, are indicated by the *continued* decline in utility stocks during the three years ended January 1, 1935.

During these years utility stocks declined in value nearly one-half, while industrial stocks gained 38 per cent compared with the depression year 1932. It is true that utilities showed some recovery in the following five years, almost regaining the 1932 level (though industrials nearly doubled in value); during this period hopes revived that the Utility Act would be fairly administered, without extreme and harsh interpretation of § 11.

In the ensuing three years these hopes faded and utility stocks sank to new low levels—holding company issues to one-half the 1940 level.

It is true, of course, that heavy tax burdens may have been a factor in the decline of the past three years. However, most industrial companies were affected by the same taxes and their stocks declined only about 13 per cent. Moreover, the final tax act of 1942 was far more favorable for the utilities than had been anticipated earlier in the year, and utilities had a very substantial advance in the last half of 1942—some of the lower-priced holding company stocks doubling in value, though tax selling marred the December figures somewhat. Hence the January 1, 1943, figures are "ex" the worst market effects of the threatened tax burden.

In estimating that investors have lost $6,000,000,000 through § 11, we have added 50 per cent to the estimate derived from the statistics published by the New York Stock Exchange. According to recent statistics in the SEC bulletin, stocks listed on all exchanges are worth about 18 per cent more than those listed on the "Big Board." Since a number of gas-electric stocks are traded over the counter and most of these issues have probably shown a far greater shrinkage than their more "respectable" brethren on the Big Board, our $2,000,000,000 additional loss figure would seem warranted, particularly if losses in bonds are also included.

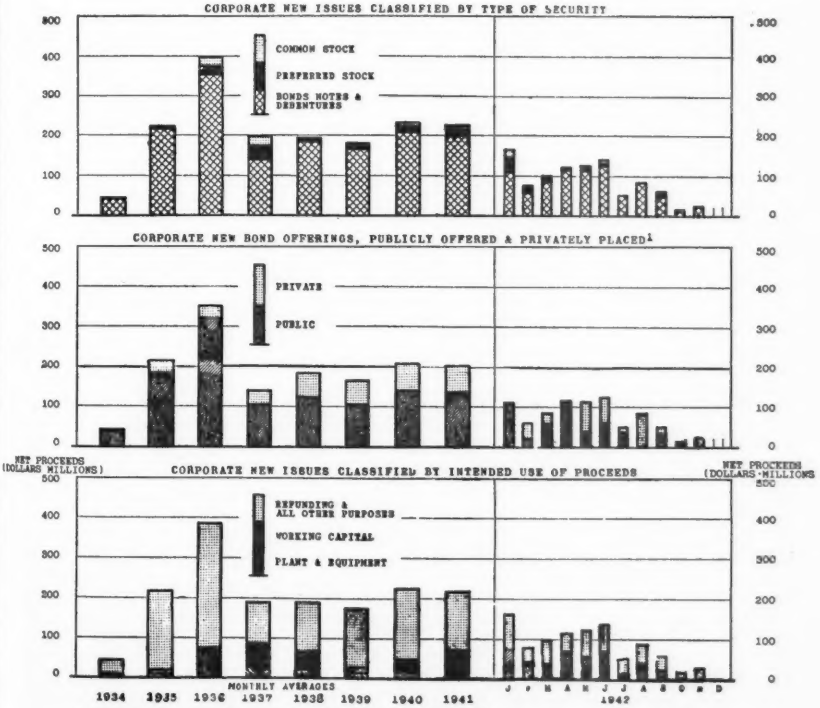
THE conclusion is plain. Congress wanted to help investors—the result has been diametrically opposite. Holding company stocks sell for far less than their "liquidating value"—*i.e.*, less than the reasonable value of the operating company stocks which they hold. This result seems due to indecisive and penalizing policies of the SEC, such as (1) curtailment of income to some holding companies; (2) threatened forced sales of holding company assets; (3) refusal to permit retirement of holding company securities by open market purchase; (4) years' delay in deciding the respective rights of holders of junior *versus* senior holding company securities; (5) failure to provide prompt legal machinery for interchange of properties between holding companies, and to encourage such interchange; (6) lack of coöperation between the SEC and the majority of holding companies in formulating practical

dissolution plans; (7) the threat that "going concern" utility values (long recognized by the courts) may be eliminated in addition to "write-ups"—with the threat of eventual severe rate cuts by state commissions.

The SEC cannot be blamed for the ambiguous language of § 11, which long clouded the basic implications of geographical integration. It has, however, set its standards of interpreting and applying the law at an impossibly high level, and this program now threatens to collide violently with the arbitrary conditions imposed by the greatest war in history. Though theoretically encouraging issuance of common stock, it has greatly increased the problem of selling equity capital. While these conflicting trends continue, the financial position of the utilities and the problems imposed by § 11 may go from bad to worse. A practical answer would seem to be—defer § 11 "for the duration," and then reënact it in such form as to give the SEC a clear-cut directive for settling the problem in the best interests of investors and consumers alike.

Bill Introduced to Suspend § 11 Of Holding Company Act

REPRESENTATIVE Evan Howell of Illinois on February 8th introduced the following bill, which was referred to the House Committee on Interstate and Foreign Commerce:



[1] *Amounts of stock issues privately placed are negligible.*

From SEC Statistical Bulletin, January, 1943.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of § 11 of the Public Utility Holding Company Act of 1935 (which requires the taking of action to bring about the simplification of public utility holding company systems) the Securities and Exchange Commission is hereby authorized to suspend the exercise of its functions and duties under such section to such extent as, in its judgment, will be not inconsistent with the public interest.

The Wall Street Journal in a recent editorial well expresses our own views:

As this newspaper understands it, the position of the SEC as to this issue is twofold. It holds that the law is mandatory upon it, that while the statute does not prescribe a time limit for dissolution of the holding company structures which the commission holds to be outside the tolerance of this law, it nevertheless commands a reorganization of corporate structures and does not specifically vest the commission with discretionary authority as to the time of its accomplishment. Also, the commission holds that a disintegration of old and reintegration of new systems as directed by Congress (in 1935) is bound to put the electric power industry as a whole in a better physical and financial condition both to play its part in the war effort and to meet whatever contingencies peace may bring.

Opposed to this commission attitude is the common plea of a majority of the holding company managements that the private capital market, in which some operating companies in a system may have to be disposed of, is almost nonexistent while the government is financing the war; that dismemberment of systems under such conditions must weaken the industry as a whole; that compulsory liquidation of holding company assets is more than likely to have a lasting effect on the disposition of investors to put their funds in utility company securities.

Representative Howell's bill as drawn goes no further than to authorize the commission to postpone execution of § 11. It will be for a subcommittee of the House Interstate Commerce Committee to consider whether it should not be amended to provide positively for a suspension of § 11 while the war lasts, or for outright repeal of the section.

In its present form the bill would at least clarify the commission's authority in regard to postponement. This newspaper believes it should go further—that Congress, which enacted § 11 years ago, should itself recognize its inappropriateness to the conditions of war and the uselessness of the sacrifices which its enforcement now is practically certain to inflict upon a multitude of small investors.

In part, those sacrifices have already been inflicted, with no proportionate benefit to "the public interest."

*

Baltimore Transit Company

(*Twelfth of a series of brief articles on transit companies.*)

BALTIMORE Transit Company, with some $68,000,000 assets, serves about 1,000,000 people in the metropolitan Baltimore district. It was incorporated as a merger of many small companies in 1899, the present title being adopted in July, 1935. In the reorganization plan of 1935 the underlying and divisional bonds received new debentures and preferred stock, while the junior bondholders and common stock received new common.

The present capitalization is as follows:

		Current Price About
$930,000	debenture B 5s/1975...	101
$16,336,823	cumulative income A 4/1975	54½
$5,519,100	cumulative income A 5/1975	60
233,427	shs. 5% cumulative* preferred stock	11
169,143	shs. common stock	1⅜

*Earnings in excess of the current annual preferred dividend requirement are to be divided (to the extent distributed), 55 per cent to the preferred stockholders as a class, and 45 per cent to common stockholders as a class, until the arrears of preferred dividends have been paid.

Interest on the income bonds was made payable only to the extent earned and only if funds were "available," but was fully cumulative except for a portion of the first three coupons (1936-37). Partial interest payments were made (about three-quarters of the coupon rate) during 1937-40, but in 1941 some extra interest was paid and in 1942 remaining arrears (about 3½ per cent and 4⅜ per cent on the 4s and 5s respectively) were cleared up. Regular coupon rates are being paid this year.

Earnings on the preferred stock have been as follows:

1942	$3.15*
1941	1.39
1940	1.15
1939	.11
1938	Nil
1937	.10
1936	.44
1935	1.30

*Estimated on basis of one year's interest requirements on income bonds.

The 1942 earnings statement (preliminary) showed an increase of over 100 per cent in taxes. It is possible that the 55 per cent accrual made during the first nine months had not been adjusted, in which case the final report will probably reflect an increase in earnings per share on the preferred stock. (Interim reports are not clear regarding the tax adjustments.)

In 1942 revenues increased about 41 per cent and for the month of December the gain was about 45 per cent. Street railway passengers increased about 39 per cent to 188,000,000, while bus passengers increased about 48 per cent to 35,000,000.

Settling the Insull Claims

DURING the 1920's several of the more aggressive holding company promoters vied with each other in developing new methods of raising capital to expand their utility empires with a minimum of control money, and thus brought trouble upon the whole industry. Some of these activities were halted suddenly in 1932. Others continued a few years until halted by receivership courts.

The major operating companies in the Insull domain were basically sound in financial structure, and encountered little difficulty; but the top investment companies such as Middle West, Midland United, Midland Utilities, etc., have had to go through the courts. Recently marked progress has occurred in settling the intercompany claims of Midland United and Midland Utilities. Daniel O. Hastings, the special master in the matter of intercompany claims, has rendered his report to the district court in Wilmington, Delaware. In its major conclusions the report appears to favor the claims of Midland United, and also

HOW PRICE LEVELS AFFECT WAR EXPENDITURES

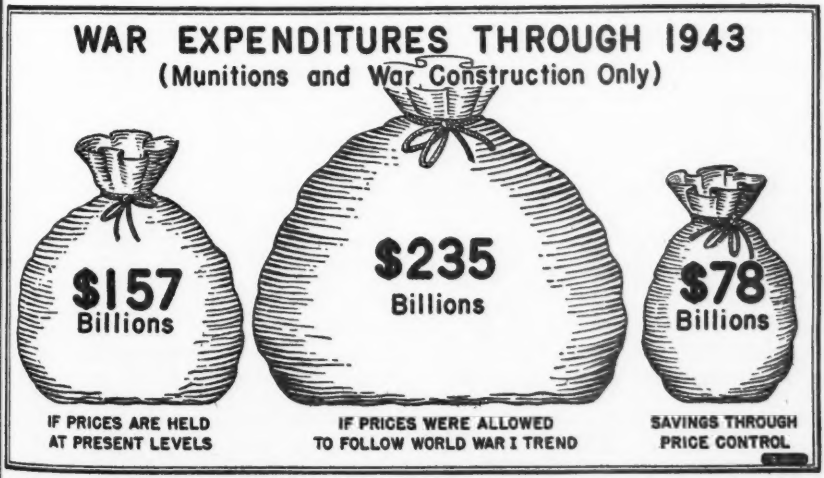


Chart issued by the Office of War Information in conjunction with the Office of Price Administration demonstrating savings for 1943 if current levels are maintained.

awards substantial amounts to a Chicago bank which had loaned money to Insull.

A reorganization plan for Midland United had been proposed by Max Swiren, counsel for the trustee of Midland United, and is, it is understood, being presented to the court and the SEC for consideration. The plan is extremely complicated but one of the main provisions is that holders of Midland United $3 preferred should receive one share of Public Service of Indiana, and a share in a liquidating corporation. The preferred, which sold as low as 2½ about a year ago, is currently around 11½ and might well be worth 15 or more if the plan is eventually put into operation. (Public Service of Indiana is selling around 14.)

However, holders of the Midland Utilities bonds are expected to wage a continued fight both before the court and the SEC for modification of the plan. There are three bondholder protective organizations — the two committees headed by M. L. Emerich of Chicago and J. P. McGill (Eastman, Dillon & Co., Philadelphia), and a newer group represented by former Federal Judge Wilkinson of Chicago.

Tax Savings in 1942

It is impossible as yet to properly appraise the benefits obtained by the utilities from the Revenue Act of 1942. Preliminary figures for Public Service Corporation of New Jersey—one of the companies which has been hard hit by taxes—indicated that the system last year paid excess profits taxes of $9,184,887 as compared with $4,425,203 in 1941. The heavy burden of increased taxes appears to be indicated by the decline of about $4,600,000 in net income as contrasted with a gain in gross of about $16,000,000.

Preliminary figures for Commonwealth & Southern show Federal tax accruals (including deductions in lieu of taxes) of over $31,000,000 as contrasted with about $20,000,000 in the previous year—a gain of about 50 per cent. System net income declined over $1,000,000 though gross increased nearly $17,000,000.

Hartford Electric Light Company's total taxes increased nearly 38 per cent and net income for 1942 declined about 17 per cent, despite a fair-sized gain in gross.

These tax results seem somewhat at variance with certain estimates prepared for the SEC which were intended to show that the 1942 tax law would not in all cases increase taxes, owing to (1) accelerated amortization allowed, (2) preferred dividend credits, and (3) the 10 per cent post-war reduction in excess profits taxes. A table prepared in this connection for 27 operating utility companies showed potential *net savings* in 1941 Federal income tax accruals (if provisions of the 1942 act for accelerated amortization and preferred dividend credits had been applied, together with the increased tax rates) averaging over 18 per cent of the actual 1941 tax payments. Of course, these figures did not make allowance for changes in taxable net income in 1942. However, the anticipated results do not seem to square with the preliminary figures thus far published for certain systems for 1942.

REA Companies' Earnings

The *Electrical World's* recent statistical review stated that operating revenues of REA-financed companies in 1942 amounted to about $47,000,000, of which over $11,000,000 represented cost of power purchased. Net income was about $11,575,000 before depreciation; deducting an arbitrary 12 per cent of gross would leave about $6,000,000 or about 13 cents net out of the revenue dollar. However, these companies paid less than 5 cents out of each revenue dollar for "insurance, taxes, and miscellaneous." If taxes had taken the same proportion of gross as with private companies—over 24 per cent—it is obvious that they would have been heavily "in the red."

What Others Think

Broad Appraisal of the TVA

If, as Disraeli once suggested, no historical event takes place without a corresponding impetus in the literature concerning it, we are witnessing increasing evidence that the Tennessee Valley Authority is rapidly coming of age. It would be unmindful of the dynamic possibilities of that experiment to say that it is approaching maturity. Indeed, TVA is just beginning to proclaim its mission as the precursor of nationally planned watershed development. It does, however, seem, to some extent, to be emerging from the troublesome phase of politico-industrial conflict which served to obscure much of its value, promise, and actual shortcomings.

Best evidence of this fortunate evolution is the publication of a volume which frankly regards the TVA as a pattern in multipurpose stream planning for the future. This book by Joseph Sirera Ransmeier is not entirely free from the controversial bickering over public ownership *versus* private enterprise which has marred virtually all earlier writing on TVA. Yet Mr. Ransmeier does take a coldly realistic approach toward the future of Federal multipurpose stream development.

Furthermore, with the exception of the first three chapters on historical development, in which the author seems to be a bit weak in his regulatory background, Mr. Ransmeier discusses the technical problems of allocating cost of multipurpose projects with a prescient conviction which betrays not only careful research but also a high quality of balanced and disinterested judgment.

Mr. Ransmeier takes up, one by one, the various theories and problems of multipurpose cost allocation. The number and complexity of these may be a surprise even to experienced students of general utility economics. For example, there is the Equal Charge theory which proposed that joint costs of all three TVA multipurpose expenditures (power, navigation, and flood control) should be charged in equal shares against each purpose.

There is the Relative Benefit method of allocation, whereby an attempt is made to develop an allocation of joint costs according to the relative values of the various purposes served by the multipurpose system. Then, there is the Alternative Justifiable Expenditure Theory, based on a fusion of hypothetical costs which would accrue if the various functions of the multipurpose project were performed by alternative justifiable expenditures.

Other theories of joint cost allocation discussed include the Use theory, the "100 per cent method" (urged by Wendell L. Willkie), Allocation According to Direct Charges, the Vendible theory, the Capitalization Income theory, and various Incremental Charge theories.

Finally, the author gives his own endorsement of the Direct Charge theory, which seems to have the blessing of Professors James C. Bonbright and Horace M. Gray. He does so, however, on the basis of expedience and the recognition that the so-called Direct Charge method of allocation is no method at all, but rather the rejection of joint allocation cost in principle. He concedes other shortcomings such as the fact that it could not provide a very equitable "yardstick" for measuring the performance of private enterprise. He explains:

> . . . most of the standard methods of allocation are Euclidean in that they suggest charges to particular purposes such that the sum of charges is equal to total cost. But

analysis of the field of available allocation procedures has shown that only the non-Euclidean direct-charge-only method is both theoretically and practically sound. Further support for this method derives from a reëxamination of the nature of joint costs. It appears that by definition these costs are insusceptible of apportionment.

Our pessimistic conclusion as to the feasibility of allocation of joint costs suggests a reëxamination of the case for allocation. This case rests on two grounds: that allocation is needed to establish rate bases for vendible utilities; and that allocation is needed to guide investment in multiple-purpose enterprise. The first need can be obviated through the use of competitive prices or alternate costs as guides for rate making. Whether the second need can also be obviated requires further detailed analysis.

THERE is no way of making this complicated problem of joint cost allocation easy either to understand or to solve, if indeed it can be solved. And yet, with bills springing up at every session in the Congress to place new watersheds of our country under this authority and that authority, it is evident that we must reach a coördinated Federal water policy.

The final chapter of Mr. Ransmeier's book is an attempt to present factors which should be considered in determining a desirable water policy. The main points in this discussion are as follows:

1. Federal policy so far has failed to keep pace with evolution of multi-purpose technology. Federal policy is now confused and uncoördinated.

2. Master plans should be prepared for all major drainage basins, which should be consolidated into a national plan by a coördinating committee for water resources planning.

3. There should also be developed a 6-to-10-year program for achievement of the initial stage of the national plan, submitted for review to advisory committees on conservation law and transportation.

4. The administration of a national water program should be entrusted to *decentralized* drainage agencies (*à la* TVA). Consideration should be given to the possible participation of state and local governments. Ways of assessing local beneficiaries of traceable benefits should be investigated.

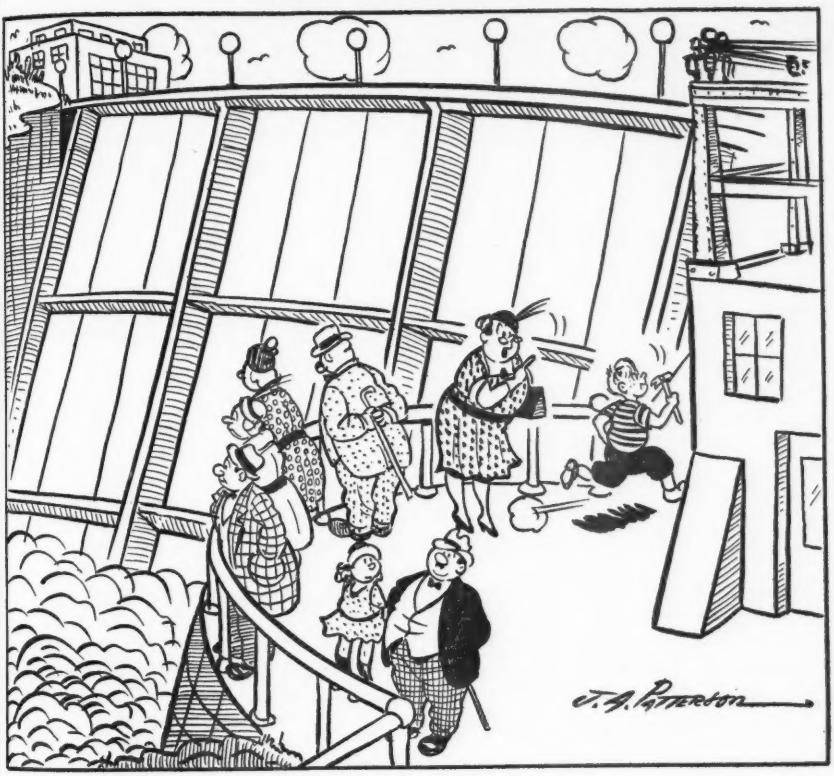
5. Private hydroelectric enterprise should continue its existence in developments as far as it is able to do so consistently with the approved master plan. However, the "requirement of optimum basin improvement" may eventually preclude private capital enterprise from new adventures into major hydroelectric development.

On this last point the author states:

. . . If the requirement of optimum basin improvement is established and maintained and if the decision is not made to subsidize private enterprise for the achievement of such improvement, the probability seems great that the rise of the public multiple-purpose system foreshadows the end of new private construction in the nation's streams. Although it is quite possible that other factors may combine to do so, this alone need imply neither the immediate decline of existing private hydroelectric enterprise nor the ultimate decline of the privately owned power industry as a whole.

IT was noted above that Mr. Ransmeier, on questions of regulation, could probably not be accepted without critical examination. Here is a rather naïve passage (page 31) which contains, in this reviewer's opinion, at least one glaring *non sequitur*. The author had observed that public authority to control utility rates is based upon the fact that a utility is a business "affected with public interest." The author goes on to say:

. . . But while this characteristic provides a ground for regulation, the courts have held that it does not justify the taking of property without due process of law and that, when property is taken, adequate compensation must be made. Logically interpreted, these propositions are inconsistent with *any* public power over rates. This may be demonstrated by the following argument. Any rate reduction which will tend, over the long run, to reduce company net revenues constitutes a taking of company property. The common sense of rate control in the "public" utilities is certainly that "extortionate" profits should not be permitted and that when rates appear to be "too high" commissions should require their reduction. To compensate the companies for profits lost as a result of an ordered reduction would leave them in the same position as if the order had never been made, and merely would shift a part of the "unreasonable" rate burden from power consumers to taxpayers. Unless company property (in the sense of cap-



"ELMER, GET AWAY FROM THAT DAM; YOU'LL BREAK IT"

italized "excess" profits) can be taken without compensation, the power of rate control is quite without meaning. Thus, the principles of the courts led to a logical impasse in the field of rate regulation.

However much one may disagree with the foregoing, it really has no direct bearing on the central purpose of Mr. Ransmeier's volume, which is to discuss the economics of multipurpose stream planning. As far as that purpose is concerned, public plants might just as well sell their power at the bus bar for distribution by private utilities, assuming that public regulation of the latter would insure adequate distribution at reasonable rates. The author does not suggest this; but it can be reasonably implied from his repeated observation that whatever theory of cost allocation is adopted for multipurpose projects, the differences between TVA and private electric power operation would be relatively inconsequential since they all are confined to the narrow economic realm of generating costs. It is the field of distribution with which the regulation of utility rates is chiefly concerned.

MR. Ransmeier is fortunate in being able to begin his volume after some of the basic inconsistencies and, to some extent, hypocrisies which marked the establishment of TVA are now, literally, water over the dam and moot questions for purposes of present discussion. Such hypocrisies and inconsistencies have invariably marked the carving out of economic empires, whether political or in-

dustrial. Since the days of Clive in India, the cynical historical observer has become familiar with the end-justifies-the-means argument in the establishment of such empires.

Hence the "incidental power" argument by which TVA stuck its head under the constitutional tent; hence the Pontius Pilate attitude of the Supreme Court, which refused even to consider the constitutionality of America-in-the-power-business on its own merits; hence the "vanishing yardstick" which justifies the establishment of public power on the basis of desirable competition and then disappears in favor of area monopoly through the absorption of private systems which it was supposed to measure —these are all growing pains, if not labor pains, which the TVA has left behind it.

It is even conceivable that under a more conservative Federal administration TVA could now function equally well under the old Al Smith policy of confining the state to hydro-power generation and other multipurpose functions, leaving distribution of power and other private business to capital enterprise. In any event within the somewhat original yet broad field which he has marked out for himself, it is clear that Mr. Ransmeier has written a valuable, just, and thought-provoking work.

—F. X. W.

THE TENNESSEE VALLEY AUTHORITY. By Joseph S. Ransmeier. Vanderbilt University Press, Nashville, Tennessee. Published December 4, 1942. Price $3. 486 pp.

REA Association Holds First Meeting

IN a special message read before the first annual convention of the National Rural Electric Coöperative Association on January 19th, President Roosevelt said that he regards the electrification of the country's farms under the REA as one of the "lasting achievements of my administration."

In a written tribute to the REA and the hundreds of rural coöperatives which it serves, President Roosevelt stated:

> Year by year, through REA reports, I have followed the advance of the rural pole lines, like a peaceful army, to the conquest of a better life for those who produce the nation's basic agricultural products.
>
> It has been a victorious march, bringing to over a million farms in 45 states the means to better farming and the comforts of American civilization.

Emphasizing that "scores of electric devices, performing essential farm operations, are also potent implements for winning the war," the President declared:

> Production and preservation of food have become of critical importance to the defense of democracy.
>
> Thus the extension of electric service to a million farms was an important step in preparedness for ultimate victory. . . . It represents an extension of what is perhaps the most democratic form of business enterprise, one in which the individual finds his greatest gain through coöperation with his neighbors.

He added that as the war-time strain on man power grows, "the nation will realize ever more clearly how much the rural electric coöperatives have added to its strength."

SECRETARY of the Interior Harold L. Ickes, in an address to the final session of the convention, sharply rebuked those "who cry against the efforts of the people to protect their interest through their government." He said:

> . . . Those who say "leave it to us" are the ones who dragged us into the black pit of isolationism after the last war and perpetrated the collapsible prosperity of the twenties.
>
> I say to them that the American people will not leave it to them. We are not fighting this war in order to set the stage for another depression here at home or for another inevitable war throughout the world. We must see to it that our great public power projects that are saving lives now by shortening the war, will, when peace comes, play an equally important rôle in our reconstruction.
>
> Not only do these projects return the money that we have invested in them, they make possible the saving of millions of dol-

lars to the consumers. They represent new opportunities for small, decentralized business enterprises based on low-cost electric power.

Mr. Ickes underscored the keynote of the meeting when he said:

> You coöperatives follow the sound business principles of paying off your indebtedness and thus bringing down your rates. This proper practice has not generally been followed in the utility business.

He then recalled that the Rural Electrification Administration has lent to coöperative utilities $462,000,000 to carry power to more than a million rural homes and farms. Then he stated that representatives of the coöperatives must prepare to expand their systems after the war. He added:

> Your millions of customers own and control your systems. You are constantly bringing down the cost of service because you are not requiring them to pay on inflated capital accounts. . . . When your debt to the government is repaid, you, the customers, will own your systems.
>
> The farms that we have electrified are meeting the shock of war and its consequent labor shortages and have continued to increase production for our armies, our allies, and ourselves. Public power agencies have shouldered their guns as have all of us. And as we march to victory we look forward to the power age that we are molding, when the latent resources of our nation will be unlocked by low-cost power and the many regions of this country will be developed to their fullest for the benefit of their people.

LELAND Olds, chairman of the Federal Power Commission, in an address to the group on "Coöperatives and a United Nation," asserted:

> The great economic powers in this country, those that oppose the TVA and the REA and the Bonneville Administration, and the Arkansas Valley Authority, and the enfranchisement of labor, see in the great war need for unity an opportunity to serve their private interests. . . . Their great campaign for private enterprise is a campaign to reverse the REA and TVA trend—a campaign to destroy the very roots of the great unity of purpose which was moving to assure the democratic use of the country's resources. If that campaign succeeds in controlling the political pattern of the next ten years it will represent a setback for that basic democracy for which tens of millions throughout the world are fighting.

Mr. Olds emphasized the fact that through the growth of coöperative enterprise, the ultimate goal in economic activity is reached because men work together in terms of a common purpose rather than with conflicting purposes.

In summarizing his talk, Mr. Olds added:

> In short the growth of coöperative enterprise offers not only the most Christian and the most democratic but also the most scientific basis on which to build our American civilization. . . . The experience of working together overflows into the broader life of the people creating a greater sense of national unity.

—E. M. P.

Business Replies to the TNEC Committee

WE have heard considerable thunder on the left during the current congressional session about the Dies committee. Critics of this committee have urged in full-page newspaper advertisements and through other media that the Texan Representative has permitted his committee, with its congressional prestige, to be used as a sounding board for indiscriminate and unwarranted vilification of a number of American citizens whose limited or casual association with left-wing organizations does not truly reflect any desire to overthrow by violence or otherwise the traditional form of American government.

Without passing upon the merits of this contention, which Congress will resolve to its satisfaction in any event, it is mentioned here simply because it presents almost an exact reverse of a situation which prevailed on the other side of the Capitol dome a short while ago. The latter situation occasioned considerable discomfort on the part of the business-minded members of the community, which the newspaper writers would unhesitatingly label the "right wing."

The reference is to the doings of the Temporary National Economic Committee, of which Senator J. C. O'Mahoney of Wyoming was chairman. Although this committee was set up as the result of a joint resolution of Congress approved by the President on June 16, 1938, to investigate the "concentration of economic power in the United States," it was by no means a Congress-controlled nor even a Senate-controlled creature. The administration procured sufficient representation upon it to assure effective control of its direction.

THE net result, officially, was a preliminary report submitted by Chairman O'Mahoney to Vice President Garner on July 17, 1939, and a final report submitted to Vice President Wallace on March 31, 1941. The committee, which early earned the nickname of "antimonopoly committee," also published 43 studies or monographs which had been submitted to it by members of its own staff and by authors to whom specific topics had been assigned.

The reasons for this rather unique manner of conducting an investigation entirely *ex parte* were set forth by H. Dewey Anderson, the executive secretary of the committee, in testimony before it on January 15, 1941, in which he said in part:

> The Temporary National Economic Committee early perceived that public hearings, while indispensable, had limitations which prevented a completely satisfactory description and analysis of economic problems. More orderly and sustained treatment of these problems was required, and was provided for by the allocation of research studies to the various agencies and to the staff of the committee. The result is the assembly of 44 monographs written by authorities in their several fields who have had access to the records of government bureaus, to the files and hearings of the TNEC, and to all other available documents.

As to the status of such studies by individual authorities, however, Dr. Anderson said:

> Each monograph has the status of testimony offered before the committee. It is solely the view of the agency and authors submitting it, and not necessarily that of the Temporary National Economic Committee. It is offered the committee as information for study.

THESE monographs secured a wide circulation. By sheer accident of the genesis of the TNEC committee, with its perfunctory supervision of the result, these monographs carry with them, to the nondiscriminatory observer, the joint prestige and backing of Congress and the administrative branch of the government.

They are read and quoted today by students and writers interested in the subjects with which they deal. Unfortunately, the factual background is not always either comprehensive or correct, the conclusions reached do not always follow from such data as is adduced. In general the treatment accorded the subjects with which these monographs deal is such that it seemed unwise to allow them to stand on the record before the American people without some adequate comment and refutation of at least their more glaring fallacies and errors.

Accordingly, the National Association of Manufacturers arranged for a committee to undertake a review and analysis of these TNEC monographs. The help of a large number of economists, university professors, lawyers, and others of outstanding competence in their respective fields was secured, and the result is an 802-page book published by H. W. Wilson & Co., New York city, called "Fact and Fancy in the TNEC Monographs."

The book cannot be described as light reading, but those searching for truth will find in it an honest and sincere effort thoughtfully to present the viewpoint of the sort of men who have played significant parts in America's industrial development. The publishers hope that it may receive such circulation as to refute by future reference some of the heresies contained in the original 43 monographs.

The book is a joint compilation by John Scoville, chief statistician of the Chrysler Corporation, and Noel Sargent, secretary of the National Association of Manufacturers. The original Sco-

"HELLO. THIS IS THE FIFTH BATTALION SIGNAL CORPS. GOOD MORNING!"

ville-Sargent survey of the TNEC monographs comprised hundreds of pages of manuscript and with three exceptions (life insurance, patents, and petroleum), concerning which outside materials were used, the resulting work is their primary responsibility.

WHAT did the taxpayers receive for total appropriations amounting to $1,070,000 received by the TNEC? Messrs. Scoville and Sargent tell us that $850,000 was allocated to six executive departments of the Federal government, which were represented on the committee. About $160,000 went for printing. Although it is probably impossible to segregate the amounts spent for the 43 monographs, it is estimated that they cost the taxpayers approximately $750,000, conservatively speaking. For this amount the taxpayers received, in the words of Messrs. Scoville and Sargent, the following:

1. Forty-three monographs of highly uneven value, their exact merits or lack thereof being set forth in the following pages.
2. Several statistical and economic studies in the monographs which provide real contributions to economic knowledge.
3. Several studies which are both harmless and valueless.
4. A number of studies which contain glaring errors, inconsistencies, and inadequacies, which do no service to the TNEC, or to the public, and certainly not to their authors.
5. A number of studies which indicate such initial bias by their authors against the individual enterprise system that they cannot be regarded as impartial and valuable studies.
6. Evidence of a deliberate design by

many of the monograph authors to lay the groundwork for, and set forth the pattern of, government control of private activity along virtually Nazi and Fascist lines in the post-war world.

ONLY a small portion of this monograph discussion bears directly on the utilities. Much of it covers such general business matters as price control, taxes, patents, profits, size of organizations, antitrust action, trade associations, consumers' standards, and so forth.

TNEC Monograph No. 35, on the "Economic Standards of Government Price Control," did have a portion (Chapter IV, Part 1) written by Professor Ben W. Lewis, of Oberlin College, on the rate policies of the Tennessee Valley Authority. Messrs. Scoville and Sargent criticize Professor Lewis' work in some detail, accusing TVA of misusing its yardstick, loose accounting, particularly with respect to allocation of cost, and indirect subsidy through tax exemption. They conclude in part (page 537):

> It must be clear from the preceding discussion that the rates of the TVA power enterprise depend primarily on the Federal Treasury for support. Its rates reflect the principles of a public service at the public expense and cannot be compared with those of private businesses which must pay their own way. The Federal taxpayers, if they choose, may extend such a subsidy not only to the TVA but elsewhere; but no reasonable mind could expect self-supporting and tax-paying business-managed enterprise to operate at such rates. Because of the greater efficiency of business management, of course, it could be expected to operate considerably more economically than a politically managed business enterprise, but efficiency cannot be expected to offset a subsidy amounting to more than half the total business costs.

The discussion on patents contained in this book, which is, in effect, a reply to TNEC Monograph No. 31, was first prepared and published by William R. Ballard, general patent attorney for the American Telephone and Telegraph Company, and appeared in *Bell Telephone Magazine* for November, 1941, under the title "Patents and Free Enterprise."

—F. X. W.

Krug Blasts the Power Shortage Myth

"THERE is today no shortage of power," said J. A. Krug, recently appointed director of the WPB Office of War Utilities. "This is a sharp contrast to the situation as to many other vital necessities."

These forthright remarks were made by Mr. Krug in an address delivered before the TVA Distributors at Chattanooga, on February 16, 1943. The speaker went on to say:

> The power men—public and private, in this area and throughout the country—should be proud of the job that has been done in providing power supply.

Because electric power is the life blood of war production, the speaker said that it is reassuring to know that electric power will not be a limiting factor in all-out war production. This would seem to indicate that Mr. Krug is not convinced that there is no power shortage today, but that there won't be any hereafter. He gave statistical reasons:

> War production has been following a steadily increasing curve since 1940. During 1942, the rate of increase reached its maximum. The tremendous expansion in war power requirements and all civilian needs was carried successfully by the power systems of the country. Existing installations and power plants now under construction will be adequate for the still larger requirements that are projected for 1943. However, during this year and next, the margins of safety will generally be less, and in many areas reserves will be called upon for carrying the less essential power loads. Should these reserves be required for meeting outages it will be necessary to curtail the use of power for nonessential purposes.
>
> In the year just ended, the peak electric load on all Class I utility systems approximated 33,000,000 kilowatts. This compares with the dependable capacity of 41,200,000 kilowatts. The 1942 peak load of 33,000,000 kilowatts compares with 31,600,000 kilowatts for 1941 and 28,000,000 kilowatts for 1940. The 1942 load would have been much higher

had it not been for War Time, which was put into effect in 1942, and military dimouts which were extended in 1942.

For 1943, the peak load should not exceed 38,000,000 kilowatts. The utility expansion program authorized by the War Production Board is designed to bring available dependable capacity to 45,100,000 kilowatts by the end of 1943. In the fall of 1943, however, the margin for reserves will be substantially lower, as much of the new capacity will not be ready for operation before the late months of this year.

As all power men know, it is necessary in planning adequate supply to have the over-all dependable capacity substantially exceed anticipated peak loads.

Reserves are indispensable requirements for continuity of service, and additional margins of surplus are necessary to accommodate unforeseen loads which will develop partly through unexpected war expansion and partly through unexpected shifts between programs and between areas. The power plants now under construction have been carefully selected by the War Production Board for those locations where they will contribute the maximum to maintaining operating reserves and, at the same time, provide essential margins of surplus where additional power is most likely to be used.

Mr. Krug went on to explain this:

> The program as presently planned contemplates a gradual reduction in the margins available for reserves and surpluses during the next two years. We believe that the reserve margin remaining in each year will be sufficient. In any case, there is still time to install additional capacity for 1944 should it be required. In the event that completely unexpected requirements of major magnitude appear, large amounts of new hydro and steam capacity can be provided for 1944 by making a decision to that effect as late as June 1, 1943. For just such a contingency, the power program has been so planned that numerous power installations can be completed in from twelve to eighteen months. This is possible because much of the basic construction necessary for expanding capacity at existing hydro and steam plants has already been provided.
>
> Although data as to over-all supply and requirements are significant, an understanding of the situation requires analysis of conditions on a region-by-region basis. Even if expenditures for the war program in later years do not greatly exceed the amount now projected for 1943, sufficient flexibility must be preserved from area to area to accommodate the shifts in production which will accompany the inevitable changes in military requirements. On a regional basis, the power situation breaks down into three main categories: A number of major regions show a substantial power surplus; a few areas affected by peculiar conditions show tight power supply; and in the remainder of the country, supply is in reasonable balance with present and indicated requirements. . . . I do not know of a single instance in which the operation of a war plant has been delayed by lack of electric power supply. Every single piece of complicated equipment, from the switches at the industrial plant back through the transformers, distribution feeders, transmission lines, to the generators in power stations, has been in place and ready to operate when the new war plants were ready for use.

There have been a great many factors which have made it possible for WPB to do this kind of a balanced job. One of these recognized by Mr. Krug has been the "high degree of technical competence of the men who operate our utility systems, public and private."

On the important subject of War Time which is creating quite a stir through the Middle West these days, Mr. Krug had this to say:

> War Time is important as a power conservation measure. We estimate that setting the clocks ahead an hour reduced the 1942 peak by at least a million kilowatts. The War Production Board fully realizes that War Time has caused great inconvenience to farmers generally and in some states has worked hardship on many people. Nevertheless, the War Time statute, as applied to the country as a whole, has made a most important contribution to increasing all-out war production. The million kilowatts of power saved is sufficient to produce a billion pounds of aluminum per year. If this power capacity had not been saved, it would have been necessary to provide substantially more new facilities than our present power program contemplates. This could only have been done by using scarce metals and equipment at the expense of the production of planes, ships, and munitions, and would have seriously interfered with the erection of plants so vitally needed for synthetic rubber and 100-octane gasoline.

Power pooling has been another immensely important factor in assuring an

adequate power supply. Starting with the experience in the Southeast during the serious drought of 1941, the WPB has developed, in coöperation with major power systems, vast power pools for each of the half-dozen critical power supply areas of the country. These, in addition to the Southeast pool, include the Southwest pool (Texas, Arkansas, Louisiana, and Oklahoma), the far West (California and Arizona), the Northwest (Bonneville), the Middle West, and New England. Through these pools alone, Mr. Krug said, at least *one and a quarter million kilowatts of additional firm power supply* has been assured.

Discussing the formation of these pools, he stated:

> These power pools have been possible only through the most thorough coöperation of power systems, public and private. Differences of opinion and differences of policy as between systems have been pushed into the background in order that through such unselfish action war power loads may be carried with the minimum use of critical materials and labor.
>
> Needless to say, without the great public power undertakings, such as the TVA here in the Southeast, the Bonneville Power Administration in the Northwest, and the Bureau of Reclamation projects in several western states, it would have been impossible to carry out the war production program now projected. Fortunately, these projects were started many years before the war. The realization that the future of this great country depended upon the maximum development of its natural resources is now reaping dividends for all of us. The TVA and Bonneville alone are providing power for well over one-half of the country's total aluminum production. It is also important to note that there are few places in the world where power can be obtained with such an overall economy of material and labor as the additional installations in the power plants which—thanks to foresight—already exist on the Tennessee and Columbia river system.

DURING recent months, the newspapers have been filled with stories about production scheduling. In this respect WPB has been scheduling for a long time. Since 1941 all major power projects have been constructed in accordance with carefully laid scheduling plans. The most critical elements—that is, the turbines—have been scheduled under WPB orders which fix delivery dates for each manufacturer. It has been worked out with relatively low priorities. Nevertheless, largely as a result of the scheduling operations, power plants have been completed on a schedule which has made it possible to meet all power requirements. Krug states that it is "hard work and not high priorities" that contributed to getting the job done.

Referring to prospects for power curtailment, Mr. Krug made the following statement:

> While power capacity is generally adequate, serious difficulties are already being experienced in the transportation of fuel to meet the greatly increased requirements of war production and offshore shipments. In planning new power capacity, we have given preference to hydro wherever possible to save fuel. But steam power is predominant in a number of areas and important in nearly all. Power systems in many sections of the country utilize large quantities of fuel, and in some areas this fuel must be transported hundreds of miles. For this reason there has been some discussion of the possibility of reducing nonessential uses of electric power for the purpose of conserving fuel and transportation. Such a program would involve the curtailment of all nonessential lighting and other luxury uses of power in those areas where a saving in fuel and transportation would result. Whether or not such a dimout is needed is a matter which must be determined by the government agencies primarily responsible for fuel and transportation. Some persons mistakenly believe that a nation-wide dimout is being advanced to take care of a power shortage. There is, of course, no need for a "dimout" of the nation's cities from the standpoint of power supply because there is no present or impending shortage of power capacity. As I have already indicated, curtailment of power use may be necessary from time to time in case of outages, unusual drought, sabotage, or unavoidable delays in installing the new capacity that is now under construction; but such measures, in contrast to power curtailment to save fuel and transportation, would be only for temporary periods and in local areas.

Krug concluded that the war power supply job can be done only by the systems which are directly responsible for supplying power to the public. He warned his audience that they will have difficult times ahead with respect to material, labor, and capacity, but he expressed his conviction that the power end of the war effort would continue to shine as brightly as it has to date.

The March of Events

Utility Workers Told to Stay on the Job

On February 9th Paul V. McNutt, chairman of the War Manpower Commission, and Petroleum Administrator for War Harold L. Ickes issued a joint statement intended to clear up reported misunderstandings on the part of oil company employees regarding the WMC's recent statement on nondeferrable occupations. It had been reported that oil, natural gas, and gasoline company employees engaged in vital and essential jobs in those industries failed to report for work and were seeking employment in munitions plants or some other kinds of work which they thought was listed as more essential by the WMC. Applicable portions of the joint statement follow:

"Petroleum is regarded as one of the most essential of war industries and has been so designated previously by the War Manpower Commission. Bulletins issued by the WMC to local U. S. Employment Service offices, and Selective Service Occupational Bulletins Nos. 15 and 21, issued in August and September, 1942, for the guidance of local draft boards and of employers, list 179 specific classes of jobs in the petroleum and natural gas industry and its transportation service which are directly classed as essential activities.

"Oil and natural gas are vital to this war and it does not help to win the war for men who have long been trained and skilled in this industry to leave their present jobs. We wish to emphasize that while planes, tanks, and ships fight the battles, they cannot fight without oil to fuel them. The production, refining, transportation, and distribution of oil and gas are all necessary."

While the February 9th statement was mainly concerned with employees of oil, natural gas, and gasoline companies, it was stated that "the same principle applies to other essential industries"—presumably other utility workers, as well as many services of civilian supply.

Rate Rises Rest with OPA

An increase in utility rates, even though made as the result of automatic adjustment clauses based on increased taxes, fuel costs, and similar items, cannot be made without prior notice to the OPA, it ruled on February 9th.

In a formal interpretation, OPA held that such rate increases come within the provisions of the Emergency Price Control Act as amended and OPA procedural regulation No. 11, even though the automatic adjustment provision in the utility company's contract may have been made before the Price Control acts were enacted.

The act provides that no public utility shall make any general increase in its rates or charges which were in effect September 15, 1942, unless it first gives thirty days' notice to the President or such agency as he may designate. The OPA has been designated as that agency by the Director of Economic Stabilization. The utility must also consent in these cases to the intervention by OPA before the regulatory agency having jurisdiction over the rates.

Rural Extensions Expedited

The War Production Board on February 8th announced a plan for expediting construction of urgent rural electric extensions in connection with the government's food production program. A procedure has been adopted to release certain types of copper conductor from frozen stocks for a temporary period ending April 1, 1943, for constructing rural extensions already authorized under Supplementary Order P-46-c.

The WPB on January 20, 1943, issued P-46-c to permit short rural extensions along existing rural lines as a means of relieving the farm labor shortage and increasing food production. In accordance with long-settled WPB policy, the order stipulated that the new construction must be with steel wire. Since the spring of 1942, the WPB has prohibited the use of copper conductor for electric extensions where steel could be used as a substitute. Stocks of copper have thus been conserved for purposes which can only be served by copper.

Arrangements have been worked out to make additional supplies of steel wire available for rural extensions. However, pending arrival of steel wire from wire mills, a limited amount of frozen copper stocks in the hands of utilities will be released immediately, to permit construction of urgent extensions which can be undertaken at once. The procedure is applicable alike to private utilities and public coöperatives. Releases of copper will be made upon the basis of individual applications in the case of each extension.

In the case of REA coöperatives, distribu-

tion of the steel wire is being coördinated by the REA in accordance with arrangements worked out between the WPB and that organization.

TVA Projects May Be Reinstated

THE War Production Board has made it plain to the Tennessee Valley Authority, according to TVA Chairman David E. Lilienthal, that many deferred power-generating projects of the TVA, Interior Department, and War Department may be reinstated during the next few months to avert a possible power shortage.

The WPB indicated that all or part of the $116,000,000 worth of deferred TVA power projects may have their priority restored, Mr. Lilienthal told a House Appropriations subcommittee in hearings on the 1944 Independent Offices Appropriation Bill last month.

Mr. Lilienthal predicted that reinstatement of the projects, which include two dams already begun and 18 generating units at other dams, will hinge on whether it is decided to expand war production further in 1944.

"If war production does not reach any greater heights than the level set for 1943," he said, "then it is my judgment that TVA will probably have power enough."

But if production is to be greater in 1944 than in 1943, "then in the early months of this year some of these projects must be reinstated or there will be a shortage," he said.

He handed the subcommittee a letter from WPB Chief Donald M. Nelson to the Budget Bureau, in which Mr. Nelson recognized the possibility of reinstating some of the deferred projects "on very short notice," and urged that the TVA, Interior Department, and War Department hold funds on hand so they can start work immediately.

Mr. Lilienthal asked Congress for $17,500,000 as a reserve for this purpose.

Tax Claim Settled

THE Ministry of Finance announced last month the signing of an agreement with the Rio de Janeiro Tramway, Light & Power Company and affiliates providing for settlement of income tax claims covering ten years from 1930-40.

The agreement, a compromise, called for payment of 110,000,000 cruzeiros ($5,500,000) on an original claim for 162,000,000 cruzeiros which the company had deposited while submitting the case to arbitration. Major K. H. McCrimmon, director of the company, said the outcome "was entirely satisfactory" and that the government was refunding to the company 52,000,000 cruzeiros of the amount deposited.

The affiliated companies include the Brazilian Telephone Company, the Brazilian Hydro-Electric Company, and the Jardim Botanico Railway.

City Goes on Strike

THE inhabitants of the city of Camaguey went on a general strike recently in protest against the failure of government authorities to provide water for the city. Commerce and industry closed down, labor suspended work, transportation halted, and children left the schools. People hung out yellow flags to denote a disaster.

Three persons were slightly wounded during a protest manifestation. Soldiers and police took over to prevent further disorders. The water shortage started several weeks ago because of a breakdown of pumps, tanks, and other equipment on the aqueduct and for four days no water reached the city.

President Fulgencio Batista granted an appropriation on February 10th and ordered the Ministry of Public Works to furnish water immediately.

Arizona

Utility Purchase Bill

A BILL which would pave the way for municipal purchase of the Tucson Electric Light & Power Company's utility system was introduced in the state legislature last month by Representative J. P. Martin of Pima county.

The measure would extend the scope of the municipal revenue act of 1940 to permit incorporated cities to issue bonds for purchase of power, water, gas, or other utility systems.

The citizens' committee in Tucson has been investigating the possibility of municipal purchase of the utility company.

Arkansas

State's Rights Invaded

P. A. Lasley, spokesman for the state utilities commission, recently charged that the Federal Power Commission's investigation of rates charged the Lake Catherine aluminum plant was "an invasion of state's rights." He charged the FPC had no jurisdiction over rates for power delivered at the plant.

Mr. Lasley declared the rates involved were

between the Arkansas Power & Light Company and the Defense Plant Corporation, owner of the plant; that the rates had been approved by the state commission; and that it was a matter of intrastate commerce. Arkansas Power & Light is a key firm of the power pool, and makes all billing to DPC.

Chief Trial Examiner Frank A. Hampton, for the second time since the hearing began December 14th, refused to allow a comparison of the private utility pool rates with those of REA-financed Ark-La Electric Coöperative, Inc., when the Arkansas agency's lone witness, Chief Engineer J. E. Flanders, undertook to testify that the Arkansas commission had twice compared rates of AP&L to the plant with those of Ark-La. Mr. Lasley protested vigorously.

Mr. Hampton denied that FPC would undertake to pass on a ruling of the Arkansas commission.

Every state regulatory body in the country would be asked by the Arkansas Department of Public Utilities to join it in fighting any encroachment of the FPC on state jurisdiction and intrastate rates, the department subsequently announced. Letters appealing to other regulatory bodies to assist in halting the "unconstitutional invasion" of state boundaries and state rights were scheduled to be sent out by the department.

The FPC's investigation was closed February 5th with the possibility it would be reopened in Washington before the FPC reaches a decision.

Uniform Gas Rate Bill

A BILL providing for uniform prices on natural gas sold by producers to distributors for resale to the public was returned without recommendation by the house oil and gas commission on February 10th.

Introduced by Representative Edward H. Patterson of Johnson county, the bill would prevent producers from charging higher rates to one customer than to another, without first having obtained from the state utilities commission an order finding that the difference in sales price was not discriminatory.

Mr. Patterson said that many small gas distributors are forced to charge high industrial rates because they "have to pay discriminatory high rates" to producers. He compared the 19 cents per cubic foot rate paid by the distributing company of his home town of Clarksville with a 9½-cent rate paid by a distributor in Fayetteville.

Opposing the bill, Thomas Compton, an official of the Arkansas Louisiana Gas Company, said it would "put the whole rate system in jeopardy."

California

Rate Reductions Announced

APPROVAL of natural gas and electric rate reductions for the city and county of San Diego, aggregating $262,900 annually and effective February 15th, was announced by the state railroad commission recently through President Franck Havenner.

The largest total single reduction was that to general service gas customers, whose savings will amount to $158,700. Industrial and military users of gas will benefit by $42,500.

Total electric rate reductions will amount to $61,700, with $59,000 of this amount being saved by military establishments and the balance of $2,700 by shipbuilders.

Reductions were brought about after conferences between the San Diego Gas & Electric Company, City Manager Walter Cooper of the city of San Diego, and representatives of the state commission.

The commission's rate adjustments were said to reflect increased war revenues, as well as increased operating costs.

Colorado

Reports on Utilities

PUBLICLY owned utilities of Colorado Springs met the burden of more than one million dollar expenditures in 1942 for debt retirement, contributions to the support of local government, and capital extensions without necessity of outside borrowing, City Manager E. L. Mosley revealed in his annual report last month.

More than a third of the outlay was incurred in extending water, gas, and electric utilities to Camp Carson and Peterson field, established near the city in 1942. These expenditures totaled $375,677.

In 1942 the city's utilities paid $300,000 into the municipal general fund, $120,000 of the amount being in lieu of taxes.

The municipal utilities of Colorado Springs also paid $2,817 to Manitou Springs for franchise tax liability.

Other major items included $100,000 for retirement of water division bonds, $10,000 increase in the 1939 water revenue bond sinking-fund account, and $388,716 for net capital expenditures at plants.

District of Columbia

Adequate Power Assured

WITH the installation of a new 50,000-kilowatt generator at Buzzards Point nearing completion, the adequacy of Washington's power system seems assured for the duration, PEPCO officials said recently, after the North American Company had included Washington in its list of war centers that had had to sacrifice new generators to other localities.

It was planned before the war to double the District's power supply with the addition of four new 50,000-kilowatt generators, but after the third generator was in process of installation, the company was informed that priorities on the last one had been canceled.

Illinois

Call Traction Unity Failure

WARNINGS that the proposed $179,000,000 Chicago traction unification scheme might cost the riding public millions of dollars a year—if the consolidation is to meet its financial obligations—were contained in an examiners' report made public last month by the state commerce commission.

The last sentence of the report was: "The plan, as submitted, is so basically unsound that it should be disapproved." If the commission, which has full power to approve or disapprove the merger, follows this view the whole traction plan will have to be scrapped.

One of the tables in the report estimates that if the proposed company should pay the required interest on bonds, and a dividend of $3 on the preferred stock, and set aside $2,000,000, annually for modernization, an all-over fare average of 10.7 cents would be required at normal levels of traffic. The present average fare is 8.3 cents and the fare increase, based on nearly 850,000,000 passengers, would approach $20,000,000 a year.

The report, a monumental document of about 300 typewritten pages, was drawn by Leslie E. Salter, attorney, and Fred Kleinman, chief of finance for the commission. They reviewed in detail the evidence presented for and against the merger of the surface and elevated lines at a series of 50 hearings that began in late July. Their conclusions, which are in effect their advice to the commission, were reported to blast nearly all the arguments of the proponents of the plan.

Iowa

Seeks Further Gas Rate Cut

MAYOR John MacVicar recently announced that the city council would seek to increase to $80,000 the total gas rate reduction proposed for Des Moines. The city council subsequently agreed to a new gas rate schedule which would reduce rates an estimated $100,472 a year. The Federal Power Commission had previously said Northern Natural Gas Company, which supplies the Des Moines Gas Company, had reduced wholesale natural gas rates to the city by $61,178.

Pointing out that passing on the $61,178 cut to consumers would not pinch the Des Moines Company, MacVicar said he "hopes" to get a total reduction of $80,000.

The situation was complicated when the mayor argued that the reduction on individual gas bills would be very small and suggested therefore that the amount of the cut simply be turned over to the city government to reduce taxes. The benefit would be "better distributed" if the amount were to be cut off the tax levy and this would "do more good all the way around," MacVicar said.

Kentucky

Won't Review Gas Order

THE Louisville Gas & Electric Company on February 8th failed to obtain a U. S. Supreme Court review of a Federal Power Commission order directing the utility to charge against its surplus $601,973 which had been disallowed, as part of the cost of the Ohio Falls hydroelectric project. The company contended this order, upheld by the sixth Federal Circuit Court, would "wipe out more than half" of its surplus.

"A charge of $601,973 to surplus," the company told the Supreme Court, "is no mere bookkeeping entry . . . it would take the company's property just as if the company were

required to pay $601,973 to some third party."

The company claimed $7,829,738 as the actual legitimate original cost of the project. After disallowance orders in 1933 and 1937, the commission directed the company in 1939 to charge $601,973 against its earned surplus account. The company resisted on the ground that the commission had not theretofore in any other case "intimated that the disallowed amount should be charged to surplus," that its accounts were regulated by the Kentucky Public Service Commission, and that the 1939 order was entered "without an order of any kind." The circuit court upheld the 1939 order and refused to review 1933 and 1937 orders.

Utility Purchase Vote

A MOVE designed to make it possible for Paducahans to vote next November on the question of issuing revenue bonds to acquire Paducah properties of the Kentucky Utilities Company was initiated last month by the board of commissioners.

The board adopted a resolution requesting Joseph C. Swidler, general counsel of the Tennessee Valley Authority, to report on negotiations which the TVA has been carrying on with R. M. Watt, representative of Kentucky Utilities, relative to determination of a price for the Paducah electric power system.

A copy of the resolution was forwarded to Swidler at Knoxville by Mayor Pierce E. Lackey, who called his attention to the fact that if the issue is to be submitted to the voters in November, steps leading to determination of the price to be paid for the system must be started soon.

To Send Bills Quarterly

THE Lexington Water Company will bill its customers on a quarterly basis instead of monthly, under a new plan announced last month by Manager E. E. Jacobson as a war conservation measure. The policy will affect approximately 16,000 customers, he said.

The new plan calls for the mailing of bills on a "staggered" basis, with one-third of the customers receiving bills each month. Jacobson said the plan had been approved by the state public service commission.

Maryland

NLRB Rules against Transit Firm

IN a precedent-setting decision, the National Labor Relations Board early last month approved and affirmed its trial examiner's finding that the operation of the Baltimore Transit Company affects interstate commerce. The ruling was the first of this nature in the field of public transportation systems operating wholly within a single state. It was regarded as an important new step toward enlarging the Federal government's jurisdiction over such operations.

Under the established procedure, the company may, if it chooses, petition the United States Circuit Court of Appeals for a review of the NLRB's final decision. Similarly, the NLRB may petition the court for an order enforcing its decision.

After ruling that the Baltimore Company is subject to the provisions of the National Labor Relations Act, the NLRB held that it had committed unfair labor practices and ordered it to withdraw all recognition from, and completely disestablish, the independent union of the Transit employees of Baltimore city.

Cease and desist from discouraging its employees to become members of the AFL Amalgamated Association of Street, Electric Railway, and Motor Coach Employees.

Reimburse all employees for fees and dues of the independent union which have been checked off from their wages since June 2, 1942.

Offer immediate reinstatement, with back pay since last June 2nd, to nine individuals.

Offer reinstatement to a tenth individual, upon application, within forty days after his discharge from the armed forces.

Post notices of compliance with the NLRB order.

The Baltimore Transit Company subsequently informed the NLRB that it had taken no steps to comply with the orders of the board. As a result of the company's stand, it was expected the case ultimately would reach the Supreme Court.

Michigan

Rebate Act Sought

AN aftermath to Detroit's attempt to obtain for customers of the Detroit Edison Company, in order to forestall payment of $8,000,000 by the company in excess profit taxes to the Federal government, developed in the state legislature recently.

Drafted by Detroit city officials, a bill to require rate adjustments or rebates if any utility

company becomes liable to excess profits taxes, was reported in the hands of Representative Joseph F. Nagel, of Detroit, for introduction.

Vance G. Ingalls, Detroit assistant corporation counsel, said the measure would give the state public service commission authority to order rebates under those circumstances. The commission last year rejected the city's request for rebates, and said it had no power to make retroactive rate adjustments. Ingalls said the bill would eliminate that contention.

War Demands Less

DETROIT, the country's largest war production center, required less electricity last year for its huge war output than it would have for equivalent activity in production of civilian goods. This development, surprising because of the fear frequently expressed of the danger of a power shortage because of war production expansion, was disclosed in the annual report of the Detroit Edison Company sent to stockholders last month.

"The call on our power plants for electrical energy," said A. C. Marshall, president and general manager, "has not increased as much as it might have in a normal peace-time year, and we have had no difficulty in carrying the load."

All estimates of peak loads for 1942 proved too high, principally because of the change in time and because the use of industrial electric energy per worker seems to be about 10 per cent less for war manufacturing than for automobile manufacturing, Mr. Marshall explained.

Discussing the effect of the war on the company's operations, he said construction work had been curtailed sharply and that some betterment work had been postponed to conserve critical materials.

The report disclosed that the state public service commission was conducting an investigation "to determine whether rates are unreasonable." The commission has ordered that any new rates be retroactive to October 26, 1942.

Minnesota

Expert Hired for Fare Fight

THE St. Paul city council recently approved the hiring of Hugh B. Bearden of Frankfort, Kentucky, as expert witness and consultant to help prepare and state the city's case for street car fare reduction.

Hearings on demands of St. Paul and Minneapolis for lower fares began February 15th.

The city is seeking to have rates reduced to 6 tokens for 45 cents or less. The rate now is 6 for 50 cents.

Bearden, consultant for the Kentucky Public Utilities Commission, replaced Francis S. Haberly of Chicago, who is ill.

Missouri

Power Coöperative Bill

A BILL authorizing rural electrification coöperative associations in Missouri to obtain perpetual coöperative charters, which was defeated in the state house on February 8th, again was called up the following day, the adverse vote reconsidered, and the bill was passed.

It was then sent to the senate.

Supporters of the measure, which would eliminate the present 25-year limitation on the charters of such coöperatives, and place them on the same footing as privately owned utility companies, as to charters, had gotten busy and rounded up additional votes. The bill was passed 92 to 43. The previous vote was 74 to 32, two votes short of the required majority of 76 for house passage.

Representative Roy Hamlin of Hannibal, Democratic minority floor leader, who actively opposed the bill, asserted the legislature should not give the coöperatives, largely financed by the Federal Rural Electrification Administration, a perpetual corporate existence, in competition with privately owned utilities. He declared the coöperatives thereby would be perpetually exempted from taxation.

Nebraska

Power Commission Proposed

A BILL was introduced recently in the state legislature that would create an Omaha people's power commission with authority to acquire and operate the Nebraska Power Company of Omaha.

The commission would be a political subdivision with power to carry on all governmental functions except levying taxes. It could

acquire electric properties by negotiation, lease, or condemnation, or buy common stock of private utilities if a controlling interest were obtained.

The 6-member commission would first be named by the mayor of Omaha, thereafter choose its own members with none serving more than two 6-year terms. The bill specifically removes the present authority of the Metropolitan Utilities District of Omaha (gas and water) to take over and operate any electric utility the city might acquire.

After meeting expenses, the commission would have the right to use net revenues for the promotion of social welfare within the commission's area. Suggested uses would be to defray cost of lighting streets and public places, establishing and maintaining parks and playgrounds.

Rate Cut Held Possible

MEMORANDUM copies of the recent order of the Federal Power Commission reducing rates in territories served at wholesale by the Northern Natural Gas Company, received on February 8th, were reported to confirm the estimate of $205,000 reduction which the commission finds possible to be allocated to Lincoln users, served by Iowa-Nebraska Light & Power Company. The FPC estimate was based on the amount sold by the company for the twelve months ending November 30, 1942, it was said. This was reported to be $858,493.

The order was issued by the FPC immediately following its acceptance of an offer of the Northern Natural Gas Company involving a reduction of rates totaling in excess of $2,000,000. The company operates an 800-mile pipe line that taps the gas fields of southwestern Kansas and the Texas panhandle and distributes it through companies in Nebraska, Iowa, South Dakota, and Minnesota.

May Condemn Power District

NEBRASKA City may go ahead with condemnation proceedings against the Consumers Public Power District if higher courts uphold reduced valuations set by courts in the Kearney and Battle Creek cases, it was reported recently.

Voters of Nebraska City last November turned down a proposal to buy Consumers' properties at a negotiated price of $1,231,000, which they felt was too high. The voters had approved condemnation of the Central Power Company but the case was not completed before Consumers acquired the property.

Taking the cue from the Kearney case where a 3-man court whittled Consumers' asking price of $1,240,000 to $271,000, Finance Commissioner F. E. Zeibenbein said "it is about time we did something."

In the Battle Creek case, three district judges reduced Consumers' valuation by one-half.

New York

Transit Safety Unimpaired

JOHN H. Delaney, chairman of the New York city board of transportation, recently branded as "false and alarmist" statements made by Phillip Murray, president of the CIO, and by officers of the Transport Workers Union, intimating that the safety of operation and equipment on the city subway lines was being impaired because of failure to grant wage rises or to submit the wage issue to arbitration.

Mayor LaGuardia early last month asked Mr. Delaney to prepare a comprehensive summary and statement of wages paid to the 32,000 employees of the city's unified transit system, in order to offset misrepresentations and to inform the public of the true situation. The mayor's action was seen as a reply to the charge made by the executive committee of the CIO in Washington on February 6th that wages paid the city's transit workers were "substandard" and "the lowest in the industry."

A bill was introduced in the state legislature on February 4th, designed to end the wage increase controversy, which would direct the board to grant a 15 per cent pay increase to all employees of the operating division of the city transit system. The proposed pay boost, retroactive to January 1st, would amount to $10,000,000 a year, to be added to the present yearly payroll total of $72,000,000.

Senator Arthur H. Wicks, of Kingston, Republican chairman of the senate finance committee, sponsored the bill.

Bill to Create Power Agency

NEW York city voters would ballot next November on the question of whether to create a municipal power authority, under terms of a measure considered recently by the state legislature.

Introduced by Senator Louis B. Heller, Brooklyn Democrat, the bill calls for a power authority of not more than seven members to be appointed by the mayor. The authority would furnish public utility service to public and private consumers, acquire and operate plant facilities, and collect charges sufficient to pay interest and principal on debts and expenses including retirement reserve.

Water Power Bill Passed

THE state senate on February 15th unanimously passed and sent to the assembly

the Dewey program bill which would more than quadruple the rental paid by the Niagara Falls Power Company for the water which it diverts for power purposes from the Niagara river. Debate preceded the defeat, by a party vote, of the Gutman constitutional amendment, which, according to its sponsor, would have made sure that the legislature was restating the state's inalienable rights to water power sites and would have prevented further power leases and made possible a recapture of present power developments ten years after the adoption of the amendment.

Senator Dunnigan, Democratic leader, said that Governor Dewey had promised a proposal making the state's water power rights inalienable and that no such measure had yet appeared before the senate.

Assemblyman Daniels of Ogdensburg on February 11th announced that he would introduce a new water power bill, cutting the time of licenses for water power diversion issued by the water power and control commission from fifty to five years, and also restating the state's sovereignty over the water of the Niagara river.

Ohio

Gas Indictments Quashed

ELEVEN present and former officials of the Ohio Fuel Gas Company and its associated firms stood clear on February 5th of criminal charges growing out of the 5-year-old $42,000,000 gas "dilution" case. Common Pleas Judge Robert P. Duncan quashed indictments charging the officials with presenting false bills for gas to the city and receiving payment on them. Last July, the jurist dismissed false pretense charges against the officials.

In his decision, Judge Duncan said:

"I am now convinced that the individual defendants are charged not as principals but only as aiders and abettors and since there was no crime committed by the principal (the Ohio Fuel Gas Company), there could be no crime by aiders and abettors."

The $42,000,000 civil suit alleged that inert, or "stabilizing" gas, was mixed with natural gas supplied in 1929 and 1930.

Natural Gas Line Planned

ARRANGEMENTS have been completed by which the Panhandle Eastern Pipe Line Company would supply the East Ohio Gas Company, a subsidiary of the Standard Oil Company of New Jersey, with 50,000,000 cubic feet of natural gas daily, it was learned recently.

Under the contract between Panhandle Eastern, one of the nation's richest natural gas pipe lines, and East Ohio Gas, considerably more gas would be made available for war production and other purposes in the Akron and Cleveland areas. East Ohio Gas would build a line 65 miles long and of 20-inch diameter from its properties outside Akron to the Panhandle line near Toledo.

Application for approval of the project by the War Production Board and for priorities for the construction materials had been made. The cost of the connection, estimated at $2,000,000, would be borne primarily by East Ohio Gas.

The Federal Power Commission on February 11th announced its order setting a public hearing on March 3rd in Cleveland, for the purpose of determining whether the East Ohio Gas Company is a natural gas company within the meaning of the Natural Gas Act, and investigating the cost of natural gas service rendered by the company, including the cost of transportation of natural gas from the Ohio river to the city gates of Cleveland, Euclid, and Lakewood. The order provides that interested state commissions may participate in the hearing.

The three cities of Cleveland, Euclid, and Lakewood filed separate complaints with the commission in June, 1942, asking that the FPC order East Ohio to show cause why it should not ascertain and submit the original cost of its properties in compliance with various orders of the commission addressed generally to all natural gas companies subject to the commission's jurisdiction. In their complaints the cities state that they have a substantial interest in the enforcement of the commission's orders and in the determination of the company's original cost.

Asks Plant Purchase

THE Democratic majority of the Columbus city council was accused last month of "smoke-screening" an honest effort to put the municipal light plant on a solid basis, after they proposed to purchase the Columbus & Southern Ohio Electric Company.

This charge was made by Republican councilmen after the proposal to purchase the $70,000,000 power plant was made on the floor of the council. The project was offered for consideration by Arvin J. Alexander who said that he had been negotiating with a Wall Street fiscal agent on the purchase of the utility property.

Alexander's proposition came following a resolution by Republican Councilman Joseph R. Jones, who asked that the municipal light plant be set up as a separate utility. Jones charged that the city plant has been a political football for the past nine or ten years and that the equipment of the plant has been allowed to depreciate without any provision for replacements.

The Democratic majority of the city council

subsequently voted to grant separate utility status to the municipal plant. The vote was 6 to 0.

The council then launched into a discussion of plans to purchase the huge Columbus & Southern Ohio Electric Company, the value of which has been placed at $34,000,000 by city engineers.

Any action on this plan however, was blocked by Republican Councilmen Joseph R. Jones and Ray G. Hauntz, who refused to favor a suspension of the rules which would allow a plan for the city to contract with Fiscal Agent Guy C. Myers to proceed with negotiations for the proposed purchase to be voted upon.

Oregon

Rate Parleys Fail

THE state board of control, at two recent conferences at Salem with officials of the Portland General Electric Company, failed to reach an agreement on a price covering electric energy used by the state activities in the Salem area.

James H. Polhemus, president of the electric company, offered to provide power for the state activities at 8.5 mills per kilowatt hour, compared with 11.7 now being paid.

The board of control countered with an offer to pay 7.5 mills under contract, ranging from two to five years, and 8 mills without contract. Polhemus did not say definitely when he would reply to the board's offer.

State Purchasing Agent Roy Mills said a price of 8 mills per kilowatt hour on power consumed by state activities in the Salem area would save the state approximately $18,000 a year, when compared with the price of 11.7 mills now being paid.

The contract with the Portland General Electric Company expired on July 31, 1941.

Utilities Bill Hit

J. W. McArthur, superintendent of the Eugene municipal power and water utilities, recently charged that house bill No. 214, which would tax city power utilities, "would impose an unbalanced, discriminatory, and unfair tax on Eugene's electric utility."

In a statement discussing the measure which was sponsored by the Lane county delegation to the state legislature, the superintendent said the measure would take from 17 to 20 per cent of the gross electric revenues of the Eugene utility, and would necessitate rate increases up to 20 per cent.

PUD Has Sales Authority

THE state supreme court early last month ruled that a people's utility district has authority to sell and distribute power outside its own boundaries, and that it can pledge revenue received outside the district for paying off revenue bonds.

The opinion was written by Justice Harry Belt in a case involving the central Lincoln People's Utility District.

The district directors authorized $850,000 in revenue bonds, of which $735,000 was to be used for purchasing the distribution system of the West Coast Power Company. The district intends to use Bonneville power.

The right of the district to serve outside its boundaries was contested by four taxpayers who contended that the bond issue was illegal because revenues from outside the district were pledged to pay off the bonds.

"The authority of a utility district to operate within or without its boundaries is conferred upon it in plain, simple, unambiguous language," Justice Belt said. "It would, therefore, seem absurd to hold that the district can pledge only that particular part of its revenues derived from operations within its boundaries. If the application of the revenues were so restricted it would simply mean that the district would be unable to operate beyond its boundaries."

Pennsylvania

Named to Utility Board

GOVERNOR Edward Martin on February 15th nominated Dr. Frank Parker, of the University of Pennsylvania faculty, as a member of the state public utility commission.

The appointment, which was sent to the state senate for confirmation, is for a term of ten years, beginning April 1st. Dr. Parker would take the place of Richard J. Beamish, who was appointed by Governor George H. Earle for a 6-year term in 1937 following reorganization of the old public service commission. The job to which Dr. Parker was named pays $10,000 a year. He has been a member of the faculty of the Wharton School of the university for the past thirty years.

WLB Grants Pay Rise

THE War Labor Board last month granted 10,000 employees of the Philadelphia

Transportation Company a four cents an hour wage increase, retroactive to August 10, 1942. During negotiations, PTC had offered a four cents an hour increase, exactly the same figure finally approved by the WLB.

The wage rise, coupled with other increases received by company employees in the last two years, totals 16 per cent above the wage scale prevailing in 1941. Thus, the increase exceeds by one per cent the so-called "Little Steel formula" which sought to hold wages to 115 per cent of the January, 1941, scales.

The board said the wage increase would apply to all salaried and hourly employees of the company.

In addition, the board recommended creation of a joint management-labor committee to consider adjustments in individual wage rates that appear to be "out of line." Such adjustments would be subject to board approval.

Fight Looms over Water Rights

A COURT fight loomed recently over action of the Westmoreland County Authority in buying the Citizens Water Company, servicing Mt. Pleasant and Scottdale, for $1,890,000.

Joseph P. Sheridan, attorney for the authority, confirmed that the purchase was made February 5th, several hours after the Westmoreland County Commission reversed itself and granted authorization to the Westmoreland County Authority to purchase water companies.

Scottdale representatives brought injunction proceedings on February 5th to restrain the authority from buying the water companies.

Mt. Pleasant and Scottdale have been seeking to buy the company but contended the price was too high.

Lighting Cut Urged

AN immediate savings of $18,000 which may be boosted by another $25,000 was promised recently in the city's electric power bill, if council will agree to cut down Pittsburgh's great white ways.

A report of Alex R. Brunwasser, utility consultant, hired on a part-time basis with the understanding that if he did not produce a saving his job would no longer exist, said that the city could save at least $18,000 in the downtown section, Oakland, Carson street, and East Liberty.

"At the corner of Grant street and Fifth avenue there is ten times the amount of light that there is at the corner of 42nd street and Broadway, New York city," Mr. Brunwasser's report stated.

S. C. Lovett of the city's bureau of electricity also reported that a saving of from $15,000 to $22,500 would result if a long-term contract is entered into with the Duquesne Light Company.

South Carolina

Plan to Obtain Utilities Hit

ORGANIZED Business, Inc., an organization representing most of the business and industrial interests in the state, issued a "special and urgent" message last month to members of the organization and legislators calling for action on 15 proposals.

One proposal hit government competition with private enterprise, "such as absorption of tax-paying power companies by the Santee-Cooper." The reference here was to the plan of the Santee-Cooper (state) power authority to purchase for $40,000,000 the properties of the South Carolina Electric & Gas Company, of Columbia, and the Lexington Water Power Company, of Lake Murray. There were said to be indications that a bill, authorizing this purchase, would be introduced in the near future in the legislature.

The organization said its proposals were not inspired by "selfish interest" and that "the removal of unjust burdens is an interest of all citizens and taxpayers for the state does not wish to deal arbitrarily or harshly with its citizens."

Tennessee

Senate OK's TVA Tax Replacement

THE state senate last month adopted, with an amendment, a bill introduced by Senator Grubb, Democrat of Hamilton, authorizing the state to pay over to the municipalities tax replacement funds received from the Tennessee Valley Authority in lieu of local property taxes.

The administration had opposed passage of the bill, as first drawn, contending that while the municipalities had lost taxes as a result of the public acquisition of power properties, the state also had suffered revenue losses and needed all the funds paid by the TVA to make up its own deficit.

The amendment which Grubb had adopted before obtaining senate passage of his bill compromised the issue by providing that the state might pay to the municipalities only 50 per

cent of the amounts which would have been due if the TVA had been authorized to make tax replacement payments direct to the municipalities.

Grubb estimated that under this proposal the municipalities would receive approximately $52,000 annually. Chattanooga would benefit to the extent of $16,487, Memphis $6,806, Nashville $5,823, and Knoxville $3,847.

Counties already have been receiving tax replacement funds paid by the TVA through the state, but it has been contended that there was no legal authorization for similar payments to towns. Grubb said that approximately 75 municipalities would benefit from his bill.

Utility District Bill Stymied

THE East Tennessee Utility District bill to create the district commission to purchase the $10,000,000 electric generating and distribution properties of the East Tennessee Light & Power Company in six east Tennessee counties might still be passed by the house and senate, but its supporters have been advised that if they did in order to write it into law they would have to pass it over the veto of Governor Prentice Cooper.

The bill was reported to be highly repugnant to the Tennessee Valley Authority and it has been vigorously fought by the authority through Fitts.

Texas

Bill to Avoid Tax Loss Proposed

A BILL was introduced in the state senate last month by H. L. Winfield in the form of an amendment to an act of the Forty-second legislature, known as Chapter 314, which affords a first lien, when the income of a public utility is encumbered, to several items of expense incurred in the operation and maintenance of it, such as salaries, wages, and debts incurred for materials, repairs, and necessary extensions. Into that section of the act, the Winfield bill would write "including any amount or amounts payable to any school district situated within such city or town, including home rule cities, in lieu of ad valorem property school tax."

The bill also added four new sections.

Washington

War Emergency Use Approved

THE Federal Power Commission on February 11th announced its determination and order that the war emergency use of certain interconnections in the state of Washington between the Puget Sound Power & Light Company and the Washington Water Power Company, city of Seattle, and Bonneville Power Administration will not affect the status of the Puget Sound Company under the Federal Power Act. Commission approval of the interconnections was requested by the Puget Sound Power & Light Company, a Massachusetts corporation having its principal office in Seattle, Washington, in an application filed under emergency power granted to the commission by § 202(d) of the Federal Power Act.

The application stated that the interconnections approved by the recent order are part of the Northwest pool formed by electric utility systems in Oregon, Washington, Idaho, Montana, and Utah, pursuant to Limitation Order L-94 of the War Production Board, to increase the availability of power in the area and conserve critical materials and resources for the war effort.

A substantial portion of the Puget Company's system capacity, according to the application, is used by the Army, the Navy, and war industries, and for supplying the civil needs of the workers employed by those industries.

The FPC's order of last month stated that "the unusual requirements occasioned by the present state of war are causing increased demands for electric energy, limitations on the supply and transportation of fuel for electric generating plants, restrictions on the construction and installation of additional electric generating and transmission facilities, and emergencies in the maintenance of adequate supplies of electric energy essential to the war effort, necessitating the interconnection of electric facilities, particularly in the areas served by Puget, Water Power, Seattle, Bonneville, and interconnected systems."

Seek Legislative Action

REPUBLICAN members of the Washington congressional delegation recently urged action by the state to prevent Federal control of its hydroelectric resources.

In a telegram to the state legislature and state officials, Representatives Horan, Holmes, and Norman stated they were "honestly convinced" that unless the legislature acted now to insure home rule, the Federal government might assume control of the state's power resources.

The Latest Utility Rulings

State Powers in the Absence of Federal Action

AN order of the Illinois commission requiring a terminal railroad company to provide cabooses for train employees was sustained by the United States Supreme Court, although the practical consequence of the order was to require operation of cabooses to and from the nearest switching point in an adjacent state. All but an insignificant number of the cars in the trains on the specified run moved in interstate commerce, so that the order pertained to a matter clearly within the power of Congress to regulate interstate commerce.

The company claimed that there had been congressional occupation of the field by virtue of the Boiler Inspection Act, the Safety Appliance Act, and the Interstate Commerce Act. It was not contended, however, that the Interstate Commerce Commission itself had sought to make any such requirement as that covered by the commission order. The court ruled that, at least in the absence of such action, these acts did not themselves preclude the state order.

The Railway Labor Act was not found to be an obstacle to the state's order. This act, like the National Labor Relations Act, the court pointed out, does not undertake governmental regulation of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. State laws have long regulated a variety of conditions in transportation and industry, such as sanitary facilities and conditions, safety devices and protections, purity of water supply, fire protection, and innumerable others.

Any of these might be the subject of a demand by workmen for better protection and upon refusal might be the subject of a labor dispute which would have such effect on interstate commerce that Federal agencies might be invoked to deal with some phase of it. As to this the court said:

> But we would hardly be expected to hold that the price of the Federal effort to protect the peace and continuity of commerce has been to strike down state sanitary codes, health regulations, factory inspections, and safety provisions for industry and transportation. We suppose employees might consider that state or municipal requirements of fire escapes, fire doors, and fire protection were inadequate and make them the subject of a dispute, at least some phases of which would be of Federal concern. But it cannot be that the minimum requirements laid down by state authority are all set aside. We hold that the enactment by Congress of the Railway Labor Act was not a preëmption of the field of regulating working conditions themselves and did not preclude the state of Illinois from making the order in question.

Terminal Railroad Asso. of St. Louis v. Brotherhood of Railroad Trainmen et al.

Service to Housing Authority without Deposit

ON application of the Federal Public Housing Authority for Savannah for the construction at the expense of the Savannah Electric & Power Company of a primary electric service to serve 400 housing units to be erected in a subdivision, the Georgia commission ordered the extension and installation of facilities without a payment by the authority to cover the cost of construction.

Such payment is normally required under the regulations approved for this company. The commission, however, reserved jurisdiction over the subject matter involved for the purpose of entering such final order as the commission might find to be necessary and proper.

Objection had been made by the housing authority to advancing the necessary sum to finance construction, stating that it is contrary to the established practice and policy of the Federal Housing Authority to make any advance to a privately owned utility in connection with the construction of a project.

On this point the commission made the following statement:

> This policy runs counter to the well-established practice of this commission which is to require that advances be made for the construction of facilities that are to be used to provide service of a temporary or uncertain character in order to afford proper protection to the ratepayers against such undue risk. It developed further, notwithstanding the fact that negotiations have been under way since early in November, that we have now come to a time when these badly needed housing units in a war-congested area are ready for occupancy, except for the availability of electric service.
>
> Therefore, the commission will direct, in order to avoid further delay, that said service be established and this will at the same time afford the commission's staff further opportunity to develop such a plan as may be more acceptable to the authority, and which would at the same time hold safe and preserve the investments and contractual agreements that the company has heretofore made under the approved regulation of the commission, requiring that advances made for such construction be refunded on the basis above outlined.

Federal Public Housing Authority of Savannah v. Savannah Electric & Power Co. (File No. 19384).

ODT Request for Postponement of Bus Line Installation Granted

THE District of Columbia commission granted a request of the director of the Office of Defense Transportation for postponement for sixty days of the effective date of an order to install a bus line. The director of ODT took the position that installation of the line would be inconsistent with the policies of his office.

The seriousness of the situation with respect to supplies of equipment, rubber, and gasoline was emphasized by members of ODT. The commission said:

> While the commission is still of the opinion that the installation of this line is necessary in order to provide adequate transportation facilities, it is bound to recognize the existing critical situation, which has been emphasized through the issuance lately of a directive from the Office of Defense Transportation to all transit companies and taxicabs to formulate plans immediately for drastic curtailment of service under emergency conditions.

Re Capital Transit Co. (Order No. 2492, PUC No. 3342, Formal Case No. 327).

SEC Jurisdiction to Hear Unliquidated Claims

A MOTION by North American Light & Power Company, in liquidation proceedings under § 11 of the Holding Company Act, to dismiss an unliquidated claim of its subsidiary, Illinois Iowa Power Company, for lack of jurisdiction has been denied by the Securities and Exchange Commission. Asserted claims, though unliquidated in amount, were so substantial that if liability existed, it might exceed by a very substantial amount the value of any interest which Light & Power may have in Illinois Iowa.

The commission was of the opinion that § 11(a) alone would authorize a proceeding on the claim, since that section directs the commission to examine

the corporate structure of registered holding companies and subsidiaries, relationships among the companies in the system, and the character of the interests. No determination of what is a fair and equitable plan of compliance, said the commission, could proceed until the claim had been determined. The commission also said:

> A plan has already been filed by Light & Power, in which the Illinois Iowa claim is not recognized or provided for. As an incident to making our statutory determination as to whether Light & Power's plan is fair and equitable, we must pass on the validity of the Illinois Iowa claim. This would be true even if Light & Power withdrew its plan, or never had filed a plan, as in such event it would be the duty of the commission under § 11(d) to propose or approve a plan found by it to be fair and equitable; and any such finding presupposes a determination of claims asserted against the estate. The performance of our functions under §§ 11(d), (e), and (f) of the act requires us, as an essential incident, to determine the validity, amount, and rank of the Illinois Iowa claim.

A six months' extension of time for liquidation was granted in view of the complex questions arising out of the filing of the claim.

Commissioner Healy dissented with the statement that the commission lacked jurisdiction to determine claims of this sort based on alleged causes of action arising before and outside the Holding Company Act. Since a court taking jurisdiction under either § 11(d) or 11(e) had, by the terms of the act, exclusive jurisdiction and possession of the company and its assets, he felt that the sooner the case and its disputes as to claims got into such a court, the better. *Re North American Light & Power Co. (File Nos. 59-39, 54-50, 59-10, Release No. 4066.)*

Grouping Accounts of Natural Gas Company

An application by the Kentucky Natural Gas Corporation, filed under General Instruction 11 of the Federal Power Commission's Uniform System of Accounts, for permission to group by states the company's production plant, transmission mains, and compressor stations was granted in part by the Power Commission.

Since the company operates only one interconnected transmission system in the states of Illinois, Indiana, and Kentucky, it was held that the grouping of the transmission mains by states for the purpose of accounting for operating and maintenance expenses constituted a reasonable accounting basis. Since the company operated gathering stations in several fields in those states, the grouping of such systems by states for the purpose of accounting for operating and maintenance expenses was held to constitute a reasonable accounting basis.

On the other hand, the proposal to group compressor stations by states was held not to constitute a reasonable basis for accounting for the operation and maintenance expenses of the compressor stations. *Re Kentucky Natural Gas Corp. (Docket No. G-439).*

Sale of Transportation Tokens

The sale of three tokens for 25 cents for transportation on street cars and busses was ordered by the District of Columbia commission upon a finding that this would be a convenient method of selling tokens and that it might facilitate individual transactions. The commission had previously ruled that the sale of six tokens for 50 cents did not constitute unjust and unreasonable discrimination. (See 46 PUR(NS) 232.)

The commission, upon reconsideration of the case, again ruled that no discrimination existed in requiring the larger purchases of tokens, stating in part as follows:

The petitioners cite no authority, and none has come to the attention of the commission, in which it has ever been held that the lack of a coin of a specific amount, or the inability to pay an established rate, constitutes discrimination. The established rates, including the token rate, apply alike to all passengers, and the same services are afforded to all passengers, whether they use a weekly pass or a token or pay a cash fare.

Federation of Citizens' Associations et al. v. Capital Transit Co. (Formal Case No. 309, Order No. 2484.)

Lease of Part of Operative Rights

THE California commission, although not ordinarily approving the leasing of part of an operative right, sanctioned such a step where it was necessary in the public interest to insure the continuance of a transportation service for which there was a public need. The lessor had previously transmitted mail over this part of his route, but the lessee, as the successful bidder, had been awarded a contract by the Post Office Department. Without the mail revenue operation would not return the cost of providing the service.

It was said to be most important that truck mileage be reduced to a minimum consistent with essential public needs for transportation. The commission concluded that but one common carrier should be permitted to operate between the points served by the route to be leased and that he should also carry the mail. *Re Snapp (Decision No. 35794, Application No. 25099).*

Authorization for Property Transfers and Refinancing

VARIOUS transactions involving the transfer of utility property, contributions to capital, transfers of securities, and issuance and redemption of securities received the approval of the Missouri commission in order to readjust the operations of water properties. Charles S. Mott, as the sole stockholder of the Lexington Water Company and the St. Louis County Water Company, participated in these transactions.

A contribution of $8,085,000 by Mott to the St. Louis County Water Company, to be credited to capital surplus, was one of the steps in these transactions. The commission was of the opinion that its permission was not requisite to the tender and acceptance of this contribution. However, the many components were closely related and interdependent and there was evidence that Mott, in the completion of the entire proposed plan, would receive compensation equivalent to and representing the purported contribution. The commission, therefore, considering the case in its entirety, preferred to identify this item as a temporary advance by Mott for which he would subsequently be reimbursed.

The commission had previously authorized the issuance of certain stocks and bonds, and in granting such authority had approved all provisions and conditions of issuance, including those relating to redemption. Therefore, it was of the opinion that the issuing company was presently vested with the authority necessary to effect a proposed redemption and no further authority was required.

As part of the plan Mott was to contribute to the capital surplus of another company the sum of $2,250,000 in cash. This company was to accept the contribution and was also to negotiate a short-term bank loan in the amount of $8,500,000. The commission was of the opinion that its permission was not required to effect these proposals. The bank loan, however, being a convenient method of quick financing and to be subsequently funded with proceeds from long-term

obligations, the commission included authority for the issuance of the short-term bank loan.

Two of the companies sought authority to change their names, but the commission ruled that authority for a corporation to change its name is for the consideration of the secretary of state and not within the province of the commission. It was observed, however, that the proposed changes would result in corporations of the same name operating the water properties in St. Louis County prior and subsequent to the consummation of the entire plan. This proposal had many obvious advantages in the interest of practicality and feasibility, wherefore, the commission recommended that the proper authority be sought and proper evidence filed with the commission that this had been done. *Re Lexington Water Co. et al. (Case No. 10,310).*

Other Important Rulings

AUTHORITY to operate a motor carrier service may not be granted where there is existing service in operation over the route applied for, according to the supreme court of Arkansas, unless existing service is inadequate or additional service would benefit the public or unless the existing carrier has been given an opportunity to furnish such additional service as may be required. *Potashnick Local Truck System, Inc., et al. v. Fikes, 165 SW(2d) 615.*

The Interstate Commerce Commission, in granting a certificate under the "grandfather" clause of the Motor Carrier Act, according to a Federal court decision, cannot take away any existing rights and privileges but can place in the certificate such added terms as are required by public convenience and necessity to make operations conducted thereunder consistent with operations carried on by others and convenient for the public, even though the applicant may be unwilling. *McCracken et al. v. United States, 47 F Supp 444.*

The Wisconsin commission, upon certifying revised depreciation rates for a city operating an electric utility, ruled that, in accordance with its previous determinations in *Re* Wisconsin Electric Power Co. (1941) 41 PUR(NS) 476, and *Re* Northwestern Wisconsin Electric Co. (1941) 40 PUR(NS) 202, it was proper to transfer an excess depreciation reserve balance to surplus, with the approval of the commission. *Re City of Black River Falls (2-U-1881).*

The California commission, in authorizing the operation of a water utility system, recommended the establishment of a schedule of flat rates in view of the increasing difficulty which even existing water utilities were encountering in attempts to obtain water meters because of the scarcity of material. *Re Helmer (Decision No. 35757, Application No. 24334).*

The holder of a permit to operate as a "contract carrier" under the Kansas statute relating to the regulation of highway motor carriers does not become by virtue of operation under such permit a common carrier or subject generally to the laws relating to common carriers. *Volok v. McCarter Truck Line et al. 131 P(2d) 713.*

The leasing or renting of an automobile to be operated by the lessee as a conveyance for himself, according to a ruling of the Oklahoma Supreme Court, is not within the regulatory provisions of a city ordinance "regulating the use of taxicabs, automobiles, and other vehicles carrying passengers and baggage for hire." *Dymond Cab Co. Inc. et al. v. Branson, 131 P(2d) 1007.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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VOLUME 46 PUR(NS) NUMBER 5

Points of Special Interest

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TITLES

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UNITED STATES SUPREME COURT

Public Utilities Commission of Ohio et al.

v.

United Fuel Gas Company et al.

[No. 87.]

(— US —, 87 L ed —, 63 S Ct 369.)

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of injunction is a rule of equity and not to be applied in blind disregard of fact, p. 265.

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7. The Johnson Act of May 14, 1934, 48 Stat. 775, USC § 41(1) is inapplicable to a suit by a wholesale natural gas company to restrain enforcement of orders of a state Commission which interfere with interstate commerce to the extent that they constitute an attempt to regulate matters in interstate commerce which Congress has lodged exclusively with the Federal Power Commission, if the company has exhausted all administrative remedies available to it before bringing suit, p. 265.

(BLACK, MURPHY, and DOUGLAS, JJ., dissent.)

[January 11, 1943.]

APPEAL *from decree of District Court for the Southern District of Ohio enjoining enforcement of orders of the Ohio Commission instituting an investigation of rates for natural gas; affirmed. For lower court decision, see (1941) 46 F Supp 309, 46 PUR(NS) 402.*

Mr. Justice FRANKFURTER delivered the opinion of the court: This is an appeal from a decree of the district court for the southern district of Ohio enjoining the enforcement against appellee, United Fuel Gas Company (hereafter called United), of orders made by the Public Utilities Commission of Ohio (1941) 46 F Supp 309, 46 PUR(NS) 402.

The facts are not in dispute. The Portsmouth Gas Company, a public utility, sells natural gas at retail to the people of Portsmouth, Ohio. It purchases its entire supply of gas from United, a West Virginia corporation. The gas is conveyed through pipe lines in a continuous flow from points of production in West Virginia and Kentucky into Ohio, and there delivered to the Portsmouth Gas Company. On February 24, 1932, the city of Portsmouth, under the authority given it by § 614-44 of the Ohio General Code, established the rates to be charged to Portsmouth consumers for natural gas distributed by the Portsmouth Gas Company. This ordinance did not purport to fix the charges made by United for the gas sold to the Portsmouth Gas Company. Claiming that the rates fixed by the city were unreasonable and unjust, the Portsmouth Gas Company challenged the ordi-

nance before the Public Utilities Commission of Ohio. The Commission found that the complaint was justified, and that reasonable and just rates should be substituted for those prescribed by the ordinance. But it also found that it could not determine such rates in the absence of proof that the charges which United exacted from the Portsmouth Gas Company were just and reasonable. The Commission ruled that the sale of gas by United to the Portsmouth Gas Company for resale to consumers in Portsmouth was a public utility service within the meaning of § 614-2 of the Ohio General Code, and that the rates to be charged for such service were subject to its jurisdiction. Accordingly, on April 18, 1935, the Commission ordered that United prepare and present "all pertinent and relevant testimony and exhibits tending to prove a reasonable and just rate to be charged by it to the Portsmouth Gas Company for the furnishing of natural gas for distribution within the city of Portsmouth, Ohio."

United thereupon filed a petition for rehearing with the Commission. The petition asserted that the gas sold by United to the Portsmouth Gas Company was in interstate commerce, that the two companies were wholly independent of one another, and that the Commission therefor went beyond the power of the state in asserting jurisdiction to fix the rates to be charged for gas sold by United to the Portsmouth Gas Company. United recognized, however, the authority of the Commission to compel it to produce evidence in its possession relevant to a determination of just and reasonable rates to be charged by the Portsmouth Gas Company for gas sold to its customers. This proffer of testimony by United, which was not accepted by the Commission, is relevant to the disposition of this controversy: "It [United] does not question the right of said Commission to call upon this petitioner for such evidence and facts as may be in its possession which may show or tend to show what would be a reasonable rate to be charged for gas to the consumers in the city of Portsmouth, and it offers to furnish to the Commission such facts and evidence as may be desired, or to permit any officers or agents of the Public Utilities Commission of Ohio to ascertain such facts and evidence as may be desired from its records and books for the purpose aforesaid, but denies and protests the right or power of said Commission to fix the rates at which petitioner shall sell the gas which it transports into the state of Ohio and delivers to the Portsmouth Gas Company."

On May 29, 1935, the Commission denied this petition. Its order expressly reaffirmed its previous assertion of jurisdiction to fix the rates to be charged for the sale of gas by United to the Portsmouth Gas Company.[1]

This suit to restrain enforcement of the two orders of the Commission followed. In its original bill, filed July

[1] "The Commission further finds that the furnishing of natural gas by the United Fuel Gas Company to The Portsmouth Gas Company for resale to consumers within the city of Portsmouth, Ohio, is a public utility service within the meaning of § 614-2, General Code of Ohio; that the rates to be charged therefor are subject to the jurisdiction of this Commission; that such jurisdiction includes the right to regulate the rate or price to be charged for such service, and that the exercise of such jurisdiction is necessary for a determination of the matters and things herein at issue before this Commission."

3, 1935, United alleged that the Commission's orders were an unconstitutional attempt to regulate interstate commerce; that compliance with the orders would entail an expenditure of more than $100,000 in order to make the usual appraisals required in determining a rate base; that disobedience to the orders would subject United and its agents to fines of a thousand dollars a day. These allegations were denied by the Commission. But on September 23, 1935, the parties stipulated that "it will cost the plaintiff a substantial sum of money, in excess of $3,000, to comply with the Commission's order."

The bill was still pending at the time of the enactment of the Natural Gas Act of June 21, 1938, 52 Stat 821, 15 USCA § 717, and the relevance of that statute to the present controversy was duly set forth in an amended bill filed March 8, 1939. The suit did not come to issue for more than two years thereafter. The death of one of the members of the district court, necessitating reargument and reconsideration of the case, may explain, at least in part, why a case of such public importance should have proceeded at such a leaden-footed pace.[2] It was not until January 16, 1942, that the decree now under review was entered. The district court held that, regardless of what the situation might have been in the absence of the Natural Gas Act, that statute deprived the Ohio Commission of power to regulate the rates to be charged for gas transported and sold in interstate commerce. And so the court enjoined the enforcement of the Commission's orders against United.

[1, 2] The Commission contends that the issues of this case lie outside the scope of the Natural Gas Act because the Commission was concerned with the establishment of rates for the sale of gas by United to Portsmouth Gas Company prior to the effective date of the Federal act, and, more particularly, to fix rates retroactive to February 24, 1932, when the city of Portsmouth prescribed the rates for gas sold to consumers by the Portsmouth Gas Company in the ordinance which gave rise to the proceedings before the Commission. This contention, if correct, would require us to consider whether the Commerce Clause of its own force invalidated the Commission's assertion of jurisdiction over the rates upon gas shipped by United into Ohio.

But we must reject the contention

[2] The bill was filed on July 3, 1935, and on the same day a temporary restraining order was issued by District Judge Hough. The case was submitted to a district court of three judges on September 23, 1935, but on November 19, 1935, before it was decided, Judge Hough died. An amended complaint was filed on November 20, 1936, and a second amended complaint on March 8, 1939, to which answer was made on April 25, 1939. A third amended complaint filed on April 8, 1941, was followed on April 24, 1941, by a motion to dismiss which was denied on July 8, 1941. On July 28, 1941, an application for leave to file an answer was made; this application was granted on August 4, 1941, and an answer was filed the same day. The cause having finally been submitted, the district court filed an opinion on October 2, 1941, finding that the plaintiff was entitled to injunctive relief. And on January 16, 1942, the decree now under review was entered.

The 1942 Annual Report of the Director of the Administrative Office of the United States Courts (p. 7) discloses that "The median time which elapsed from filing to disposition of civil cases terminated in the district court during the year 1942, which had been tried to court or jury, excluding land condemnation, habeas corpus, and forfeiture proceedings, was 10.7 months; and from issue to trial it was 6.1 months. . . . This compares with periods of 10.2 months and 5.3 months, respectively, in 1941."

of the Commission. It rests upon the assumption that under the Ohio law the state Commission can retroactively fix the rates of United. For it must be borne in mind that the ultimate issue in this suit is the assertion by the Ohio Commission in 1935 of power to fix appellee's rates; that the Commission has not yet exercised the power which it thus asserted; that it has not made the inquiry and the findings which must precede the establishment of new rates; that United has not posted any bond to secure refunds it might be ordered to make; that the Commission's jurisdiction to fix United's rates was denied by the district court in its decree of January 16, 1942; and that, so far as rates in the past are concerned, the power of the Ohio Commission (apart from any limitations imposed by Federal law, whether constitutional or statutory) is dependent upon the authority possessed by it under Ohio law. To sustain the Commission on this phase of the case we would have to find that it was the law of Ohio that the Commission had power to fix rates upon gas sold by United to the Portsmouth Gas Company which would be retroactive to February 24, 1932, when the city of Portsmouth prescribed the rates upon gas sold by the Portsmouth Gas Company to its customers.

Unfortunately we are not aided by a finding of the lower court on this question of state law. Since the district court was composed of three Ohio judges, they may perhaps have taken Ohio law on this point so much for granted as not to require statement. Under ordinary circumstances we would prefer to leave to others the task of formulating local law. But this case has already been too long in the Federal courts, and we do not think it comports with the public interest to remit the controversy for explicit findings by the district court as to the power of the Ohio Commission to fix rates retroactively. The situation here is quite different from Texas R. Commission v. Pullman Co. (1941) 312 US 496, 85 L ed 971, 39 PUR(NS) 428, 61 S Ct 643. Where the disposition of a doubtful question of local law might terminate the entire controversy and thus make it unnecessary to decide a substantial constitutional question, considerations of equity justify a rule of abstention. But where, as here, no state court ruling on local law could settle the Federal questions that necessarily remain, and where, as here, the litigation has already been in the Federal courts an inordinately long time, considerations of equity require that the litigation be brought to an end as quickly as possible.

The proceeding before the state Commission arose under § 614–44 et seq. of the Ohio General Code (page, 1926), dealing with appeals to the Commission from municipal ordinances establishing rates to be charged by local utilities. Whenever such an appeal is taken, as it was taken here by the Portsmouth Gas Company, the Commission is required to hold a hearing. Section 614–44. If, after such hearing, the Commission finds that the rate fixed by the ordinance is unjust or unreasonable, it must determine the just and reasonable rate to be charged "during the period so fixed by ordinance . . . and order the same substituted for the [ordinance] rate ...." Section 614-46. It is clear that

under this section of the statute the Commission can establish just and reasonable rates in lieu of those fixed by the ordinance, and can make its order effective retroactively by ordering refunds of charges in excess of the substituted rates. Re Columbus Gas & Fuel Co. (1941) Ohio PUC 22; Re Wheeling Electric Co. (1941) id. 69; Re East Ohio Gas Co. (1939) id. 15. The Commission undoubtedly has power, therefore, to establish a just and reasonable rate, retroactive to February 24, 1932, for gas sold by the Portsmouth Gas Company to the people of that community.

But whether the Commission has similar power with respect to rates for gas sold by United to the Portsmouth Gas Company—and that is the controlling inquiry here—is an entirely separate question. Section 614-46 is inapplicable because the rates to be established would not be in lieu of rates fixed by ordinance. The Commission's authority to inquire into the reasonableness of the rates charged by United for gas sold to the Portsmouth Gas Company is to be found in §§ 614-21 and 614-23, which provide as follows: "Upon complaint in writing, against any public utility, by any person, firm, or corporation, or upon the initiative or complaint of the Commission that any rate . . . is in any respect unjust, unreasonable, unjustly discriminatory, or unjustly preferential or in violation of law, . . . the Commission shall notify the public utility" and hold a hearing. If, after such hearing, the Commission finds that the rate or charge is unjust, unreasonable, or otherwise unlawful, it must "fix and determine the just and reasonable rate, fare, charge, toll, rental, or service *to be thereafter* rendered, charged, demanded, exacted, or collected for the performance or rendition of the service, and order the same substituted therefor." § 614-23 (italics added). The statute in terms thus gives the Commission power to prescribe such rates prospectively only. If, after notice and hearing, the Commission finds rates to be unlawful, it can then fix the just and reasonable rates "to be thereafter" charged. The establishment of new rates must be preceded by a finding that the old rates are unjust and unreasonable, and the new rates are prospective as of the date they are fixed. There is no basis in the statute for concluding that the Commission's orders can be retroactive to the date when the Commission's inquiry into the rates was begun; on the contrary, the explicit language of the statute precludes such a construction.

Its annual reports show that the Commission has consistently followed what would seem to be the plain mandate of the statute. See, *e. g.* Re Amherst Water Works Co. (1941) Ohio PUC 88; Re Cincinnati Gas & E. Co. (1940) id. 14; Re Union Gas & E. Co. (1936) id. 67. Whatever doubts there may have been about the matter appear to have been removed by the decision of the Supreme Court of Ohio in Great Miami Valley Taxpayers Asso. v. Public Utilities Commission (1936) 131 Ohio St 285, 15 PUR(NS) 175, 176, 2 NE(2d) 777, which affirmed a ruling of the Commission that "it was without power to make a refund in a proceeding instituted under and by virtue of the provisions of § 614–23, General Code." It is not surprising, therefore, that

counsel for the Commission did not contend before us that the Commission has power under Ohio law to establish retroactively just and reasonable rates to be charged by United for gas sold to the Portsmouth Gas Company. Our examination of the relevant Ohio materials convinces us that the Commission has not been given such authority.

[3] The Commission in this case has not yet done more than assert its jurisdiction over United's rates. It has not yet held a hearing upon the reasonableness of United's present rates; it has made no finding whether these rates are unlawful and whether new rates should be substituted; it has not entered upon an inquiry to determine what rates would be just and reasonable. As of the date of the enactment of the Natural Gas Act, therefore, the proceeding before the Commission, so far as United was concerned, was still in an ambryonic stage. And we can find no provision of Ohio law which would authorize the Commission to enter orders fixing United's rates retroactive to any date prior to June 21, 1938, when the Federal act became law. The Commission's orders must be treated here, therefore, for purposes of determining whether they are in conflict with Federal law, constitutional or statutory, as if they had been made after the enactment of the Natural Gas Act. The case cannot now be disposed of on the basis that would have governed had it come here in 1935. To inquire into the powers the Commission had that year, or any other year prior to the enactment of the Natural Gas Act in 1938, would be to ascertain an abstract question of law. The question we are called upon to decide, and it is the only question, is whether the district court properly entered the decree under review. That decree was entered on January 16, 1942, after the enactment of the Natural Gas Act, and after United, in filing an amended bill of complaint, based its claim for relief upon that act. It is familiar doctrine that an appeal in an equity suit opens up inquiry as of the time of the ultimate decision. To decide this appeal on the basis of a legal situation that ceased to exist not only prior to the taking of this appeal but also before issue was finally joined in the district court, would be to make a gratuitous advisory judgment. It is the case that is here now that must be decided, and it must be decided on the basis of the circumstances that exist now. Cf. Vandenbark v. Owens-Illinois Glass Co. (1940) 311 US 538, 542, 85 L ed 327, 61 S Ct 347, and cases there cited.

[4] And as to rates effective in the future we agree with the district court that the Natural Gas Act of 1938 governs. Congress by that act, the constitutionality, and scope of which we canvassed last term in Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736, and Illinois Nat. Gas Co. v. Central Illinois Pub. Service Co. (1942) 314 US 498, 86 L ed 371, 42 PUR (NS) 53, 62 S Ct 384, preëmpted the regulatory powers over the transportation and sale of natural gas in interstate commerce. Section 1, after declaring that "Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest,"

makes the act applicable to "the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale." Rates and charges in connection with the sale or transportation of gas in interstate commerce are required to be "just and reasonable." Section 4(a). Companies subject to the act must, under § 4(c), file with the Federal Power Commission schedules of rates and charges, and no changes in such schedules can be made without notice to the Commission and the public. Section 4(d). Acting upon either its own motion or complaint of a state or municipality, or a state regulatory body or gas distributing company, the Commission can inquire into the legality of rates and charges of companies subject to its jurisdiction, and can determine the just and reasonable rates and charges thereafter to be observed. Section 5(a).

It is clear, as the legislative history of the act amply demonstrates, that Congress meant to create a comprehensive scheme of regulation which would be complementary in its operation to that of the states, without any confusion of functions. The Federal Power Commission would exercise jurisdiction over matters in interstate and foreign commerce, to the extent defined in the act, and local matters would be left to the state regulatory bodies. Congress contemplated a harmonious, dual system of regulation of the natural gas industry—Federal and state regulatory bodies operating side by side, each active in its own sphere. See H. Rep. No. 2651, 74th Cong. 2d Sess. pp. 1–3; H. Rep. No. 709, 75th Cong. 1st Sess. pp. 1–4; Sen. Rep. No. 1162, 75th Cong. 1st Sess.

Upon the undisputed facts in this record, United is plainly subject to the exclusive jurisdiction of the Federal Power Commission with respect to the rates and charges for natural gas transported by it from West Virginia and Kentucky to Ohio. And, indeed, in compliance with the act, United has submitted itself to the jurisdiction of the Federal agency and filed schedules of its rates and charges. No changes in such schedules can be made without notice to the Power Commission. That Commission, on its own motion, can inquire into the lawfulness of such rates; if the public interest so requires, rates found to be just and reasonable may be substituted. It is indisputable, therefore, that if the Ohio Commission today made the orders complained of in this suit, it would be intruding in a domain reserved to the Federal regulatory body. The power to fix rates for natural gas transported and sold in interstate commerce has been entrusted solely to the Federal Power Commission. It does not follow, of course, that the act bars a state Commission, in the appropriate exercise of its jurisdiction, from compelling the production of evidence relevant to the proceeding before it. But the orders before us went beyond this limited purpose. They undertook to assert a jurisdiction which the state body does not possess. In our conclusion regarding Ohio law, we hold only that the assertion of power by the Public Utilities Commission of Ohio must be construed in the light of its authority under the Ohio statutes. And, as thus

construed, the order cannot be reconciled with the action of Congress in enacting the Natural Gas Act of 1938. Because the orders are not an assertion of jurisdiction to fix the rates of United prior to the enactment of the Federal act, it is unnecessary to decide whether, in the absence of Federal statute, the state could successfully attempt to fix the rates charged by an interstate natural gas company for gas transported and sold from one state to another.

[5, 6] Since these orders are invalid in so far as they impinge upon an authority which Congress has now vested solely in the Federal Power Commission, the decree below must stand unless we can fairly conclude that it was an abuse of discretion for the district court to grant relief by way of injunction. It is perhaps unnecessary at this late date to repeat the admonition that the Federal courts should be wary of interrupting the proceedings of state administrative tribunals by use of the extraordinary writ of injunction. But this, too, is a rule of equity and not to be applied in blind disregard of fact. And what are the commanding circumstances of the present case? First, and most important, the orders of the state Commission are on their face plainly invalid. No inquiry beyond the orders themselves and the undisputed facts which underlie them is necessary in order to discover that they are in conflict with the Federal act. If, therefore, United complies with these orders, it will be put to the expenditures incident to ascertaining the base for rate-fixing purposes—expenses which may ultimately be borne by the consuming public and which Congress, by conferring exclusive jurisdiction upon the Federal regulatory agency, necessarily intended to avoid. If United does not comply with the orders, it runs the risk of incurring heavy fines and penalties or, at the least, in provoking needless, wasteful litigation. In either event, enforcement of the Commission's orders would work injury not assessable in money damages, not only to the appellee but to the public interest which Congress deemed it wise to safeguard by enacting the Natural Gas Act. In these circumstances, we cannot set aside the decree of the district court as an improper exercise of its equitable jurisdiction. Petroleum Exploration Co. v. Kentucky Pub. Service Commission (1938) 304 US 209, 82 L ed 1294, 23 PUR(NS) 433, 58 S Ct 834, was a very different case. There the regulation of intrastate rates alone was involved, no conflict between Federal and state authorities was in issue, and the appeal to equity sought to anticipate the appropriate exhaustion of the administrative process.

[7] Two minor objections to the jurisdiction of the court below need not detain us long. The Johnson Act of May 14, 1934, 48 Stat. 775, USC § 41(1), is inapplicable here because the orders of the state Commission "interfere with interstate commerce" to the extent that they constitute an attempt to regulate matters in interstate commerce which Congress has lodged exclusively with the Federal Power Commission. And, unlike the appellant in Natural Gas Pipeline Co. v. Slattery (1937) 302 US 300, 310, 82 L ed 276, 21 PUR(NS) 255, 58 S Ct 199, United exhausted all administrative remedies available to it before bringing this suit. In its petition for

rehearing United requested the state Commission to modify its original order of April 19, 1935, so as to strike out those portions which we now hold to be in conflict with the Federal act. Only after the denial of this petition did United seek relief in the courts.

As we construe the decree of the district court it does not prevent the Public Utilities Commission of Ohio from requiring United to produce data in its possession which may be relevant to a determination of the just and reasonable rates to be charged by the Portsmouth Gas Company for gas sold to the consumers of that city. As has already been noted, United, in its petition for rehearing before the Commission, offered to produce such evidence. And apparently throughout this entire litigation it has held itself ready to do so. The orders of the Commission were assailed only in so far as they subjected United to the jurisdiction of the state Commission with respect to rates for gas imported by it into Ohio. We therefore read the decree of the district court as an injunction against enforcement of the Ohio Commission's orders only to the extent that this assumption by the Commission of rate-making power over United has been resisted. So read, the decree is

Affirmed.

BLACK, J., dissenting, with whom DOUGLAS and MURPHY, JJ., concur: As a result of this decision, delays incident to obtaining a Federal injunction have made wholly futile the diligent efforts of the state of Ohio to fix reasonable gas rates for the people of Portsmouth, Ohio.[1] I cannot agree with the suggestion implied here that this results from any cause other than the unwarranted interposition by courts into the business of rate making. Cf. McCart v. Indianapolis Water Co. (1938) 302 US 419, 435, 82 L ed 336, 21 PUR(NS) 465, 58 S Ct 324. Here eight years after the Ohio Public Service Commission made United a party defendant in order to fix rates "to be charged" by it, Ohio is told that United may keep any sum collected, no matter how unjust or unreasonable the rates charged may have been; and Ohio's citizens are denied the right to recoup possible losses because the Commission "has not made the inquiry and the findings which must precede the establishment of new rates." There is one reason, and only one reason, why the Commission has not made such inquiry and findings—before any step could be taken toward establishing a final rate order, and even before a single witness could be heard, this Federal injunction stopped the state Commission in its tracks. Had the Commission proceeded to make inquiry and findings in the face of the injunction it would have risked the possibility that its members, agents, and attorneys could have been seized and fined or imprisoned for contempt of court. Ex parte Young (1908) 209 US 123, 52 L ed 714, 28 S Ct 441, 13 LRA(NS) 932, 14 Ann Cas

[1] The suggestion in the opinion of the court that the state is free to continue its efforts to control the rate of the local company, Portsmouth Gas, so long as it does not interfere with United, the company which supplies Portsmouth Gas, accords a privilege of little meaning. The price charged Portsmouth Gas by United is about 70 per cent of the amount which the city council considered a reasonable rate for Portsmouth Gas to charge. It is obvious that the Portsmouth Gas rate cannot be materially affected without in turn altering the United charge.

764. If it be true, which I think dubious, that under Ohio law rates can never be fixed as of the date a proceeding begins even though delays are the consequence of improvident Federal injunctions, such a legal situation makes it all the more essential that the court below should have abstained as a matter of "equitable fitness or propriety," Prentis v. Atlantic Coast Line Co. (1908) 211 US 210, 229, 53 L ed 150, 29 S Ct 67, from tying the Commission's hands and barring it from making the final order here held to be vital. To stop these proceedings at the threshold and thus bar all possible relief for the years during which the litigation crawled along its interminable course seems to me far less justifiable than the action condemned by this Court in Petroleum Exploration Co. v. Kentucky Pub. Service Commission, *supra*.

The Federal action halting the Ohio rate-making process since 1935 is justified wholly on the ground that the Natural Gas Act passed in 1938 bars regulation by Ohio of United's rates since 1938 while Ohio law is said to bar any regulation prior to 1938 because no final order has yet been made by the Public Utility Commission. The court refuses to hold categorically that Ohio law nullifies this order, asserting instead that Ohio law requires us to interpret the Commission's order as not attempting to lead to rate making for the period 1935–1938. This will doubtless prove some surprise to the Commission which made the order in question in 1935 and which has argued both here and below that the Natural Gas Act is irrelevant because it took effect subsequent to the period in which the Commission is now interested. Whether the court considers that Ohio law bars the Commission from making a valid order, or whether it uses its knowledge of Ohio law to tell the Commission what the Commission has attempted, is immaterial —in either case we press our conception of Ohio law on the Ohioans. But the local law question has never been squarely decided in Ohio. That question is whether United can successfully, by taking full advantage of the delays of the Federal judicial system, jockey the city of Portsmouth and the state of Ohio into such a position that no one can now determine what were reasonable rates for the period prior to 1938.

Reference to state cases and particularly to Great Miami Valley Taxpayers Asso. v. Public Utilities Commission (1936) 131 Ohio St 285, 15 PUR(NS) 175, 2 NE(2d) 777, does not solve this problem, for, in the first place, under the state law all appeals to the Ohio supreme court are explicitly conditioned upon the posting of bond by the utility to secure payment of any damage resulting from delay. Section 548 Ohio Statutes. Such security for which the state law provided should have been exacted by the lower court here, Inland Steel Co. v. United States (1939) 306 US 153, 156, 83 L ed 557, 59 S Ct 415; cf. United States v. Morgan (1939) 307 US 183, 197, 83 L ed 1211, 29 PUR (NS) 47, 59 S Ct 795. "It is especially fitting that equity exert its full strength in order to protect from loss a state which has been injured by reason of a suspension of enforcement of state laws imposed by equity itself." Public Service Commission v. Brashear Freight Lines (1941) 312 US

621, 630, 85 L ed 1083, 61 S Ct 784. The Ohio supreme court might well conclude that this failure of the court below to require appropriate security justified the Commission in establishing a rate for a period prior to 1938. In addition, the very fact that the state Public Utility Commission and the legal representatives of the state of Ohio have vigorously fought this case for four years since the passage of the Natural Gas Act is indication that they at least do not suppose that the state is powerless to fix rates as of the date United was made a party defendant. We have been cited to no case in which the state supreme court has held that an injunction against rate proceedings must result in such inordinate returns as the respondent here may receive.

Under these circumstances our opinion as to the local law "cannot escape being a forecast rather than a determination." Texas R. Commission v. Pullman Co. (1941) 312 US 496, 499, 85 L ed 971, 39 PUR(NS) 428, 429, 61 S Ct 643. What was said by the court there is equally applicable here: "The last word on the meaning of Art. 6445 of the Texas Civil Statutes, and, therefore, the last word on the statutory authority of the Railroad Commission in this case, belongs neither to us nor to the district court but to the supreme court of Texas. . . . The reign of law is hardly promoted if an unnecessary ruling of a Federal court is thus supplanted by a controlling decision of a state court."[2] Here as there "If there was no warrant in state law for the Commission's assumption of authority there is an end of the litigation; the constitutional issue does not arise." Ibid. at pp. 500, 501, of 312 US, 39 PUR(NS) at p. 431.

Even assuming, with the court, that this delay in the judicial process bars the petitioners from the particular relief sought under local law, I still think we should hold that this injunction was improvidently granted. We are given as the bases of Federal equity jurisdiction these propositions: The state order is on its face "plainly invalid"; United will be put to considerable expense in complying with it; noncompliance will result in heavy penalties or in costly litigation. In my opinion none of these separately nor all taken together provide any ground for Federal jurisdiction.

What has been said above concerning the necessity of allowing state courts to decide state law is in my view adequate answer to the argument that the order is "plainly invalid." Ohio law in this respect could be adequately interpreted and enforced in Ohio courts. In addition, I do not consider the order before us ripe for review. It is simply a declaration of status requiring nothing of United other than coöperation in exploration of the rate problem for the purpose of eventually setting United's rates, and is thus as properly outside the realm of review now as if this were "an attempt to review a valuation made by the Interstate Commerce Commission which has no immediate legal effect although it may be the basis of a subsequent rate order." Rochester Teleph. Corp. v. United States (1939) 307 US 125, 129, 83 L ed 1147, 28 PUR(NS) 78, 59 S Ct 754. In this respect, the instant case is identical with East Ohio

[2] For other cases exemplifying this viewpoint see Watson v. Buck (1941) 313 US 387, 402, 85 L ed 1416, 61 S Ct 962.

Gas Co. v. Federal Power Commission (1940) 115 F(2d) 385, 388, 38 PUR (NS) 397. Unless the other grounds of alleged equitable jurisdiction take it outside the scope of the Rochester Case, this is not the appropriate time for review.

We are told that United will be put to great expense by compliance with the Commission's order in that it must provide certain statistical data necessary so that the Commission may complete its study of the rate problem. It is not suggested that this cost in itself is any reason for enjoining the proceeding nor could it be unless Petroleum Exploration Co. v. Kentucky Pub. Service Commission, *supra,* 304 US at p. 220, is to be overruled; but the special circumstance offered here is that Congress by passage of the Natural Gas Act sought to prevent such an expenditure. We are given no argument and cited to no legislative history indicating that Congress had any desire to preclude the states from protecting state consumers against unfair rates for the period prior to the passage of the Federal act.

I am not as sure as the majority of the court that refusal of United to comply with the Commission's order will in fact subject it to heavy penalties.[3] But assuming that this order is backed by the penalty clause, the case should be governed by what we said recently in Petroleum Exploration Co. v. Kentucky Pub. Service Commission, *supra,* at p. 220: "No order has been entered fixing rates or regulating conduct. The necessity to expend for the investigation or to take the risk for noncompliance does not justify the injunction. It is not the sort of irreparable injury against which equity protects." Cf. Dalton Adding Machine Co. v. State Corp. Commission (1915) 236 US 699, 59 L ed 797, 35 S Ct 480.

That United may be subjected to a course of litigation before its rights under the Ohio law are fully determined is the least of all reasons for this use of equity jurisdiction. The compelling consideration here is that "Law suits often prove to have been groundless; but no way has been discovered of relieving the defendant from the necessity of the trial to establish the fact." Myers v. Bethlehem Shipbuilding Corp. (1938) 303 US 41, 51, 82 L ed 638, 58 S Ct 459.

The judgment below should be reversed and the state of Ohio permitted to continue as best it can in view of the long delay caused by the unfortunate intervention of the Federal courts.

[3] The penalty provisions of the Ohio statute, §§ 614-64 and 65, are applicable where a rate or refund order is disobeyed, State ex rel. Ohio Bell Teleph. Co. v. Common Pleas Court (1934) 128 Ohio St 553, 555, 7 PUR (NS) 329, 192 NE 787, but it may be that orders of the sort here involved are covered by §§ 614-6 and 7, providing for the examination of records and the production of witnesses. If this is so, review may be obtained under Ohio practice without fear of penalty prior to a final judicial determination. See e. g. Mouser v. Public Utility Commission (1931) 124 Ohio St 425, 179 NE 133. We are cited to no cases which indicate which of these procedures governs this order.

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

New York Trust Company et al.

v.

Securities and Exchange Commission et al.

[No. 6.]

(131 F(2d) 274.)

Intercorporate relations, § 6 — Powers of Commission — Plan under Holding Company Act.

1. Congress gave the Securities and Exchange Commission the power, subject to review provided for its orders, to decide what is necessary in each instance to effect the provisions of subsection (b) of § 11 of the Holding Company Act, 15 USCA § 79k, relating to simplification of holding company systems, p. 272.

Security issues, § 5.1 — Cash in exchange for bonds — Holding company plan.

2. Debenture holders are in no position to question the necessity of a provision in a plan, pursuant to § 11 of the Holding Company Act, 15 USCA § 79k, which provides cash for their callable bonds to the full extent of the contract in the bond, p. 272.

Appeal and review, § 28.1 — Conclusiveness of decision — Securities and Exchange Commission.

3. The court will not disturb a finding of the Securities and Exchange Commission unless it is clearly erroneous, p. 272.

Security issues, § 5.1 — Redemption — Contract rights to premium — Continued existence of corporation.

4. The right of bondholders to have their investment in a corporation continued and the right of the corporation to shorten the bondholders' period of investment by paying a premium to call bonds flowed from debenture agreements which contemplated as indispensable the continued existence of the corporation, p. 272.

Contracts, § 16 — Impossibility of performance.

5. Where, through no fault of either party, something necessary for the continued performance of a contract goes out of existence because of some unforeseen circumstance and none of the parties has assumed that risk, the contract is regarded as charged with the implied condition that if what is necessary to performance becomes unavailable the contract is no longer binding and further performance is excused, and this is especially true where the essential existence of one of the parties to the contract has become illegal and impossible because contrary to a new concept of public policy which was unforeseeable when the contract was made, p. 273.

Security issues, § 5.1 — Redemption by holding company — Premium — Dissolution under Holding Company Act.

6. An order of the Securities and Exchange Commission denying the right

claimed by debenture holders to be paid, upon the dissolution of a holding company under a plan approved by the Commission pursuant to § 11 of the Holding Company Act, 15 USCA § 79k, a premium in addition to the principal and accrued interest on callable bonds is fair and reasonable to all parties in interest, since it provides for the payment of the bonds in a way which discharges in full the contract obligation of the dissolved corporation, p. 274.

[November 12, 1942.]

REVIEW *of order of Securities and Exchange Commission approving plan for payment of debentures of holding company which has been ordered to dissolve; order affirmed. For Commission decision, see (1942) 42 PUR(NS) 193.*

APPEARANCES: Humes, Buck, Smith & Stowell, of New York city (Ben LeRoy Stowell, of NewYork city, of Counsel), for petitioners; Donald R. Richberg, of Chicago, Ill., Park Chamberlain, of New York city, and John Dern, of Chicago, Ill. (Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., and Sidley, McPherson, Austin & Burgess, of Chicago, Ill., of counsel), for United Light & Power Co.; Chester T. Lane, General Counsel, of Washington, D. C., John F. Davis, Assistant General Counsel, of Washington, D. C., Homer Kripke, Special Counsel, of Philadelphia, Pa., Roger Foster, Counsel to Public Utilities Division, of Washington, D. C., (Theodore L. Thau, of Washington, D. C., and Aaron Levy, of New York city, of counsel), for Securities and Exchange Commission.

Before L. Hand, Swan, and Chase, Circuit Judges.

CHASE, C. J.: This petition to review an order of the Securities and Exchange Commission made under the Public Utility Holding Company Act of 1935, 15 USCA §§ 79, 79a, et seq., was brought by the trustee under two debenture agreements of the United Light and Power Company, and by certain holders of the debentures of that company. The order denied the right claimed by the debenture holders to be paid, upon the dissolution of the corporation under a plan approved by the Commission, a premium in addition to the principal and accrued interest on the bonds.

The corporation, which will herein be called Power, is a registered holding company at the top of a system comprising fifty-two companies of which seven are themselves registered holding companies. Its position in this setup was established previous to the effective date of the above-mentioned statute now to be referred to as the act, and after that took effect the Commission in due course and on March 20, 1941, 8 SEC 837, entered an order under § 11(b)(2) 15 USCA § 79k(b)(2), requiring the liquidation and dissolution of Power. This order has become final. Power has undertaken to comply with it and in so doing has made various applications to the Commission for approval of proposed steps to that end with the result that it has ample funds to pay all

of its obligations whether or not the premiums here involved are payable.

The order now on review was made upon the application of Power to the Commission for approval of a plan providing inter alia for the retirement by the payment of principal and accrued interest only of debenture bonds on dates, far in advance of maturity, as of which Power, had it exercised an option it had in the debenture agreements to call the bonds, would have had to pay a premium of 9 per cent. The sole issue now is whether the petitioners are entitled to the same premium which would have been payable upon a call by the corporation.

[1–3] Much of the elaborate argument of the petitioners becomes irrelevant when once it is realized that the order of March 20, 1941, *supra,* requiring the liquidation and dissolution of Power was not only clearly within the scope of the statute under which the Commission acted and justified by the facts but having become final has thereby become the fixed point from which to survey the right they now claim. It was the duty of the Commission under § 11(b)(2), (d), and (e) of the act to supervise the carrying out of its order of dissolution and to that end it properly entertained applications for its approval of the steps proposed to be taken. How these bonds should be dealt with was one of the questions requiring decision and as such was clearly within the proper scope of a plan to be submitted to the Commission under above subsection (e). The petitioners argue that even so the Commission was powerless to find as the subsection required that the payment of the bonds was "necessary to effectuate the provisions of subsection (b)" if there were alternative ways to dispose of the bonds upon dissolution of the issuing corporation. They suggest that such an alternative would have been to require the holding company to be left at the top of the system to assume them. We need not, however, discuss the virtues or the opposite of that suggestion. Obviously Congress gave the Commission the power, subject to the review provided for its orders, to decide what was necessary in each instance to effectuate the provisions of subsection (b). It is quite as obvious that debenture holders are in no position to question the necessity of a provision in a plan which provides cash for them in exchange for their bonds to the full extent of the contract in the bond and this is especially true of the holders of callable bonds like these. Nor will we disturb a finding of the Commission unless it is clearly erroneous. Hartford Gas Co. v. Securities and Exchange Commission (1942) 129 F (2d) 794, 46 PUR(NS) 491. Consequently we pass to the substantial question of whether the plan providing for the retirement of the bonds was unfair and inequitable to the debenture holders in failing to require the payment of any premium.

[4] That depends upon the contract rights of the debenture holders under the applicable principles of contract law. We agree with the petitioners that the debenture agreements, in so far as they provided for the payment of principal on dates certain and the payment of interest at a specified rate to the maturity dates, gave the bondholders the right to insist that the payment of principal should be made only at maturity and interest should

be paid until then. Missouri, K. & T. R. Co. v. Union Trust Co. (1898) 156 NY 592, 51 NE 309. This right of the bondholders, however, was modified by an option reserved by the obligor to call the bonds and extinguish the right of the bondholders to have their investment continued longer. For the privilege of exercising this option the corporation agreed to pay a premium at a stated rate which would decrease as time elapsed. That is to say, the corporation had the right to shorten the bondholders' period of investment by paying the premium price for so doing. It is abundantly clear that both of these contract rights, the one that of a bondholder and the other that of the corporation, flowed from debenture agreements which contemplated as indispensable the continued existence of the corporation. Such continued existence was needed to enable it to pay from time to time as promised and needed also to give it any inducement when the condition of its affairs might make such payment advantageous to exercise its privilege to pay a stated premium to relieve itself of the burden to pay interest as otherwise agreed.

This continued existence was made impossible by the valid final order of the Commission dated March 20, 1941, *supra*. So much being established, we have no occasion to discuss any more fully the Commission's creation or powers from a constitutional or other viewpoint. We have but to decide the effect on the debenture agreements of a lawful governmental order requiring the obligor to liquidate and give up its existence as a corporation before all payments of interest on the bonds have been made as agreed. Though it has been deprived of its ability to perform strictly, the corporation is in a position to pay the equivalent of the money payments in the future to be made. Therefore substantial compliance is possible and so it cannot be said that future payments of interest are excused as a matter of law because performance by the payment thereon, discounted or otherwise, has been made impossible by the Commission's dissolution order. Yet the future interest payments are excused because by the order of the Commission, i. e., by governmental power, which neither obligor nor obligee could control or with respect to which they made the contract, the venture has been frustrated. Restatement of Contracts, §§ 460, 461.

[5] Where, through no fault of either party, something necessary for the continued performance of a contract goes out of existence because of some unforeseen circumstance and none of the parties have assumed that risk the contract is regarded as charged with the implied condition that if what is necessary to performance becomes unavailable the contract is no longer binding and further performance is excused. Texas Co. v. Hogarth Shipping Co. (1921) 256 US 619, 65 L ed 1123, 41 S Ct 612; Chicago, M. & St. P. R. Co. v. Hoyt (1893) 149 US 1, 37 L ed 625, 13 S Ct 779. This is especially true where, as here, the essential existence of one of the parties to a contract has become illegal and impossible because contrary to a new concept of public policy which was unforeseeable when the contract was made. Holyoke Water Power Co. v. American Writing Paper Co. (1937) 300 US 324, 81 L ed 678, 57

S Ct 485; Louisville & N. R. Co. v. Mottley (1911) 219 US 467, 55 L ed 297, 31 S Ct 265, 34 LRA(NS) 671.

[6] This involuntary destruction of the corporation deprived it of any freedom of choice except perhaps as to the cost of its funeral. It certainly was not in a position to elect to pay a premium to better its capital structure for continued business purposes. And it certainly was under no obligation to exercise its option to call the bonds if it had nothing to gain by so doing. That motive absent, it might well let the rights of those in interest be determined as though there had been no call option. The order under review was, accordingly, fair and reasonable to all parties in interest since it provided for the payment of the bonds in a way which discharged in full the contract obligations of the dissolved corporation.

Affirmed.

SECURITIES AND EXCHANGE COMMISSION

Re Denis J. Driscoll et al., As Trustees of Associated Gas and Electric Corporation

[File No. 59-32, Release No. 4024.]

Intercorporate relations, § 19.3 — Integration of system — Inability to dispose of properties — Capture by enemy.

Subsidiaries of a registered holding company should not be stricken from the list of nonretainable properties, the divestment of which has been ordered by the Commission, on the ground that enemy forces have seized physical possession of the properties of these companies and that it will be impossible to dispose of the interests in these companies within the time allotted by § 11(c) of the Holding Company Act, 15 USCA § 79k(c), in view of the rule that difficulties of disposition have no bearing on whether any particular interest is retainable but are pertinent only to the question when compliance with the order of divestment should be enforced.

[December 30, 1942.]

PETITION *seeking clarification and modification of findings, opinion, and order issued by Commission directing divestment of nonretainable properties; granted in part.*

APPEARANCES: Allen E. Throop, for the respondents; Morris L. Forer, for the Public Utilities Division of the Commission.

By the COMMISSION: The respondents have filed a petition seeking a clarification and modification of the findings, opinion, and order issued by the

Commission on August 13, 1942,[1] directing the respondents (a registered holding company under the Public Utility Holding Company Act of 1935) to divest themselves of certain nonretainable properties under § 11 (b)(1) of the act, 15 USCA § 79k (b) (1). A reëxamination of our findings and order has convinced us that a slight modification should be made in the language contained therein and that there should be certain additions and omissions in the list of the properties ordered to be divested. These changes appear in the accompanying supplemental order and need no discussion.

Respondents request further that Manila Electric Company, Escudero Service Company, and Associated Utilities Investing Corporation be stricken from the list of properties whose divestment has been ordered. Manila Electric Company and Escudero Service Company own and operate properties in the Philippine Islands, while Associated Utilities Investing Corporation is an inactive company which is the original obligor under the mortgage of the property of Manila Electric Company.

Following the declaration of war on December 8, 1941, between the United States and the Japanese Empire, enemy forces have captured the Philippine Islands and have presumably seized physical possession of the properties of these companies. Respondents claim, therefore, that it will be impossible for them to dispose of their interests in these companies within the time allotted by § 11(c) of the act.[2] It is contended, furthermore, that the order for divestment should not cover these properties since it was the intention of Congress that the period of compliance under that section should run only while it is possible, "as a practical matter," to take effective steps to accomplish disposition.

The plain meaning of § 11(c) is contrary. Its language dates the period of compliance from the date of the order, and its intent is to provide us with power to extend that period as may be necessary. As we said in Re The North American Co.:[3]

"We have stated, and we again emphasize the fact, that, under the standards of the act, difficulties of disposition have no bearing at all on whether any particular interest is retainable; and that such difficulties are pertinent only to the question *when* compliance with our order of divestment should be enforced. Consequently, respondents' references to adverse market conditions for the sale of securities have no relevancy whatever *at this time*. The statute provides a year within which respondents may comply with our order. Furthermore, on an appropriate showing (which would certainly include a showing that bona fide attempts to dispose of properties had been prevented by adverse market con-

[1] Re Driscoll (Trustees of Associated Gas & E. Corp.) Holding Company Act Release No. 3729, 45 PUR(NS) 141.

[2] Section 11(c) provides:
"Any order under subsection (b) shall be complied with within one year from the date of such order; but the Commission shall, upon a showing (made before or after the entry of such order) that the applicant has been or will be unable in the exercise of due diligence to comply with such order within such time, extend such time for an additional period not exceeding one year if it finds such extension necessary or appropriate in the public interest or for the protection of investors or consumers."

[3] (1942) Holding Company Act Release No. 3405, 43 PUR(NS) 257, 313.

ditions), we may grant an additional year for compliance. And even at that time our orders under § 11(b)(1) are not self-enforcing. For under the act compulsory compliance can occur only after the Commission makes application to a court."

Obviously the trustees, under present circumstances, cannot dispose of their interests in the Philippine properties on a proper basis. We have no hesitancy in saying that should these same or similar facts obtain at the expiration of the one-year period, we would grant an extension under § 11 (c) of the act so far as the Philippine properties are concerned. Further, if at the expiration of the additional period, the same or similar facts continue to obtain, the Commission would not apply to a court for enforcement of its order.

An appropriate order will issue.

ORDER

The Commission having on August 13, 1942, *supra,* note 1, issued its findings, opinion, and order under § 11 (b)(1) of the Public Utility Holding Company Act of 1935 requiring Denis J. Driscoll and Willard L. Thorp, as trustees of Associated Gas and Electric Corporation, to divest themselves of certain nonretainable properties, and

Said trustees having filed a petition seeking amendments and corrections in said findings, opinion, and order; and

The Commission having reëxamined its findings, opinion, and order of August 13, 1942, and being fully advised in the premises;

It is *ordered* that the following amendments, corrections, and omissions be, and the same hereby are, made in the said findings, opinion, and order:

1. The word "admitted" shall be deleted from the second line of the last paragraph on mimeograph page 3 of the findings and opinion (Holding Company Act Release No. 3729) and the words "not claimed" substituted therefor.

2. The following companies and the properties owned or controlled thereby shall be stricken from the list, appearing in Appendix B to the findings and opinion and in the order, of the companies with which the said Trustees are required to sever all direct and indirect relationships: Canadea Power Corporation, York Railways Company, and New Jersey Northern Gas Company.

3. The following companies and the properties owned or controlled thereby shall be added to the list, appearing in Appendix B to the findings and opinion and in the order of the companies with which the said trustees are required to sever all direct and indirect relationships: Tri-City Utilities Company, incorporated in Kentucky in 1942 and engaged in the electric utility, gas and water business; Railway Properties Corporation, incorporated in New York in 1938 and engaged in holding real estate.

In all other respects, the petition of the trustees is denied, for the reasons stated in the supplemental findings and opinion of the Commission herein, this day issued.

KENTUCKY PUBLIC SERVICE COMMISSION

Re Kentucky-Tennessee Light & Power Company (Tri-City Utilities Company)

[Case No. 1003.]

Rates, § 204 — Unit for rate making — Electric division.

1. A community involved in a rate investigation should be treated separately when the company's properties in that community have no physical connection with other properties contained in the operating division, electric energy is purchased from an outside source under a different contract from those under which outlying properties are supplied, and the operations basis for the whole division is one of merely overhead management, p. 278.

Valuation, § 96 — Accrued depreciation — Estimates of observed depreciation.

2. The average of estimates of observed accrued depreciation by two expert witnesses was taken as the correct amount to be deducted to determine the rate base, in the absence of other evidence, p. 278.

Valuation, § 27 — Rate base — Cost — Reproduction cost.

3. A rate base was determined by giving full consideration to original cost, history and development of the company, cost of reproduction as a going concern, and other commonly recognized elements, p. 279.

Depreciation, § 26 — Annual allowance — Relation to accrued depreciation.

4. Annual depreciation was allowed in the amount determined by dividing the estimated accrued depreciation by the average age of the property, upon the theory that to the extent depreciation accrues as an operating expense it also accrues as a deduction from the undepreciated base for rate-making purposes, p. 279.

Revenues, § 5 — Expense of other department — Cost of electric energy — Expenses.

5. The cost of electric energy supplied to the operations of a waterworks should be added to revenues of an electric utility operated by the same company, and this amount should be added to the operating expenses of the electric utility, p. 279.

Expenses, § 114 — Federal taxes — War increases.

6. A Federal income tax rate for a preceding period was used in determining expenses of an electric utility, without allowance for increased tax rates during a war period, p. 280.

Return, § 87 — Electric utility.

7. A return of 6 per cent was allowed on the rate base of an electric utility, p. 280.

[October 30, 1942. Rehearing denied November 27, 1942.]

KENTUCKY PUBLIC SERVICE COMMISSION

INVESTIGATION *of electric utility rates; reduced rate schedules ordered.*

By the COMMISSION: On January 9, 1942, this Commission entered an order requiring the Kentucky-Tennessee Light and Power Company to show the reasonableness and fairness of its existing rates and charges for electric service in Frankfort, Kentucky, and vicinity. The respondent filed its answer asserting that such rates and charges are reasonable and fair. The Tri-City Utilities Company has since been substituted for Kentucky-Tennessee Light and Power Company as respondent.

On May 19, 1942, the city of Frankfort was allowed to become an intervening party. The city was joined in its intervention by certain individual consumers of electric energy.

After full hearings and all parties having announced the close of their presentations, the cause has been submitted to the Commission to fix and determine the fair and reasonable rates for electric service.

[1] Respondent has shown that the water plant of the city of Frankfort, and certain other outlying properties in other towns, have been operated as a division of the respondent, and presents the contention that all properties operated as a part of that division should be taken into consideration in determining the electric rates for the city of Frankfort and vicinity. The Commission finds, however, that the respondent's properties in the city of Frankfort and vicinity have no physical connection with other properties contained in the operating division; that its electric energy is purchased from an outside source under a different contract from those under which the outlying properties are supplied and that the operations basis has been one of merely overhead management, and finds, therefore, that Frankfort and vicinity should be treated separately in determining fair rates to be charged.

The Commission finds that the book cost of property used and useful in supplying electricity in Frankfort and vicinity is approximately $572,000 at the end of 1941. December 31, 1941, is the last date upon which the record shows a complete calendar year's accounting. The Commission finds that a properly estimated original cost of the properties is $511,000. An average of these two gives the figure of $546,500.

Qualified expert witnesses for the respondent and for the city have testified as to the estimated reproduction cost of the properties, less accrued depreciation, at $605,000, $635,000, and $690,000, an average of approximately $643,000.

Considering all elements of the definitely known additions, together with the expert opinion evidence, the Commission finds the physical value of the property before depreciation to be $600,000.

[2] The same experts have testified as to their estimated observed accrued depreciation at December 31, 1941, to be $91,000 as the opinion of one expert, and $131,000 as the opinion of the other. This being the Commission's only guide on this subject, it has taken as the correct item of such

accrued depreciation the sum of $112,000.

From the foregoing, the Commission finds the depreciated physical value of the property at December 31, 1941 ($600,000 undepreciated, less $112,000 depreciation) to be $488,000.

[3] To the physical value of $488,000 the Commission finds that there should be added as proper and necessary cash working capital $15,000, actual known additions in 1942 of $10,500, and necessary and useful materials and supplies of $21,500. These sums amount to $535,000, which the Commission finds to be the proper rate base upon which a fair return should be allowed. In arriving at this conclusion, the Commission is undertaking to give full consideration to all the elements required by the Public Service Commission Act of Kentucky; namely, original cost, history and development of the company, the cost of reproduction as a going concern, and other commonly recognized elements.

[4] Coming to the question of proper deductible expenses to be charged to annual cost of operation, the amount of annual depreciation charge will be first considered. By the standard dollar year method, it is found that the actual average age of the property is 11,0453 years and that, if service value has been consumed in that period in the amount of $112,000 (the average of the estimates of the expert testimony on that subject) and therefore represents the accrued depreciation existing in the properties as at December 31, 1941, then the annual allowance to produce a proper depreciation reserve in that period amounts to $10,200 annually; that to the extent depreciation accrues as an operating expense, it also accrues as a deduction from the undepreciated base for rate-making purposes.

[5] Continuing the subject of operating expenses, the respondent's records show as revenues received in the year 1941 approximately $353,000. To this the Commission finds there should be added the sum of approximately $13,000, representing the cost of electric energy supplied to the operations of the Frankfort waterworks. This increases gross revenues to approximately $366,000. For the same period the respondent's total operating expenses are found to be $202,174, to which should be added the above item of $13,000 for electricity furnished to the waterworks, making a total operating expense, before depreciation and taxes, of approximately $215,500. Revenues so adjusted, less operating expenses so adjusted, leaves net revenues before depreciation and taxes of approximately $151,000. The Commission has heretofore found that a proper depreciation allowance to be charged to operating expenses should be $10,200. After deducting that from the $151,000, approximately $141,000 is left as net income before taxes.

The general taxes allocated to the Frankfort properties from an amount actually paid by the respondent for its entire operations were approximately $18,500. A like allocation for state and Federal income taxes was $12,177. The Commission finds that, upon the amount of return hereinafter finally found to be correct, such income taxes at 1940 rates should be $11,500. It accepts the figure of ap-

proximately $18,500 for general taxes. Deducting all taxes, which aggregate approximately $30,000 from the above $140,800, there remains net before return approximately $110,800.

Approximated round numbers have been used throughout the foregoing in an effort to retain simplicity in statement. For precise dollar figures on the income statement as presented by Mr. Malcolm G. Davis from the respondent's record operations and the adjustments thereto, the following statement is inserted:

	As Presented by Davis	Income Statement Commission Adjustment	As Adjusted
Revenues	$353,196.00	$13,303.00	$366,499.00
Power purchased	139,674.00	13,303.00	152,977.00
Distributing expense	21,600.00		21,600.00
Customers' account	14,000.00		14,000.00
Sales promotion	3,400.00		3,400.00
General and administrative	23,500.00		23,500.00
Total operating expenses	$202,174.00	$13,303.00	$215,477.00
Net operating revenue before depreciation and taxes	151,022.00		151,022.00
Annual allowance for depreciation	30,312.00	20,112.00[1]	10,200.00
Taxes:			
General	18,503.00		18,503.00
State and Federal income	12,177.00	677.00[1]	11,500.00
Total taxes	$30,680.00		$30,003.00
Net before Return	$90,030.00	$20,789.00[1]	$110,819.00

[1] Red.

[6] In using the 1940 Federal tax rate in arriving at the foregoing, instead of the presently existing rate, the Commission has followed the determination of the Federal Power Commission in its Opinion No. 80, in the matter of Detroit v. Panhandle Eastern Pipe Line Co., decided September 23, 1942, 45 PUR(NS) 203.*

[7] The operating revenues less all properly allowable expenses, leaves, in the judgment of the Commission, a balance of electric income available for return of $110,819. The Commission concludes that a fair and reasonable rate of return to which the respondent is entitled is 6 per cent. Six per cent on the rate base found herein amounts to $32,100. It, therefore, appears that the respondent, based upon its 1941 operations as adjusted by the Commission, earned in 1941 an amount of $78,719 in excess of a reasonable return upon the rate base herein above established for the electric property in Frankfort, Kentucky, and vicinity.

The Commission being advised,

It is therefore *ordered*, that the respondent Tri-City Utilities Company be and it is hereby ordered and directed to file with the Commission, to become effective on bills rendered on and after December 1, 1942, such rates for electric service in Frankfort, Kentucky, and vicinity as will reduce its gross revenues $78,719 per year.

* Editor's Note.—In that case it was stated that abnormal taxes due to war conditions should be disallowed.

UNITED STATES CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT

Mississippi Power & Light Company

v.

Federal Power Commission

[No. 10414.]

Mississippi Power & Light Company et al.

v.

George Slaff et al.

[No. 10378.]

(131 F(2d) 148.)

Appeal and review, § 9 — Orders reviewable — Preliminary order.

1. The circuit court of appeals has no jurisdiction to review an order of the Federal Power Commission instituting an investigation to ascertain the whereabouts of records and to determine whether there have been violations of the Federal Power Act in reference to accounts; special power granted by § 313 of the Federal Power Act, 16 USCA § 825*l*, does not extend to mere preliminary or procedural orders, p. 282.

Procedure, § 9 — Venue — Jurisdiction of Federal courts — Residence of defendant — Investigators of Federal Power Commission.

2. A Federal district court, in a state where an investigation is being conducted by investigators of the Federal Power Commission who are not citizens of that state, has no jurisdiction in a suit against them as individuals when Federal jurisdiction of the suit rests not only on diversity of citizenship but also on the ground that the suit arises under the Constitution and laws of the United States, since in such case each defendant is entitled to be sued in the district of which he is an inhabitant, p. 283.

Courts, § 15 — Federal court jurisdiction.

3. A Federal district court does not have jurisdiction under the Federal Power Act, § 317, 16 USCA § 825p, of a suit to restrain alleged wrongs or abuses by investigators of the Federal Power Commission, since this is not a suit to enjoin a violation of the Federal Power Act, or a rule, regulation, or order thereunder, p. 283.

[November 3, 1942.]

UNITED STATES CIRCUIT COURT OF APPEALS

PETITION *by power company to review order of Federal Power Commission instituting investigation of accounts and records and to stay proceedings under order pending review; petition dismissed.*

SUIT *by power company to restrain alleged wrongs and abuses by investigators of Federal Power Commission; judgment dismissing complaint affirmed.*

APPEARANCES: In No. 10414: Marcellus Green, Garner W. Green, Sr., and E. R. Holmes, Jr., all of Jackson, Miss., for petitioner; Charles V. Shannon, Assistant General Counsel, Federal Power Commission, Reuben Goldberg and Leonard Eesley, Attorneys, Federal Power Commission, and Howard E. Wahrenbrock, Principal Attorney, Federal Power Commission, all of Washington, D. C., for respondent.

In No. 10378: Garner W. Green, Sr., A. M. Nelson, and Forrest B. Jackson, all of Jackson, Miss., for appellant; George Slaff, Reuben Goldberg, and Leonard D. Eesley, Attorneys, Federal Power Commission, all of Washington, D. C., for appellee.

Before Sibley, Hutcheson, and McCord, Circuit Judges.

SIBLEY, C. J.: In Case No. 10,414 Mississippi Power & Light Company petitions this court to review an order of the Federal Power Commission dated May 27, 1942, and to stay proceedings under the order pending review. The Commission counters with a motion to dismiss the petition for lack of jurisdiction.

[1] The order, after a finding that there was reason to believe that certain books and records of the power company had been withheld or destroyed in violation of the Federal Power Act, 16 USCA § 791a et seq., and that they were material to the Commission's examination of the costs of the Power Company's properties and a reclassification of its accounts, directed that an investigation be instituted, pursuant to § 307(a) of the act, 16 USCA § 825f, to ascertain the whereabouts of the records and whether there have been violations of the act in reference to the accounts; that named persons conduct the investigation with power to summon and examine witnesses, and require the production of books and papers; and that the power company grant free access to its accounts, records, and memoranda, for the purposes of the investigation. The petition asserts that the power company had no opportunity to be heard before the order was made; that the findings therein were unlawful and in violation of constitutional right; that the order is broader than the act allows, and confuses matters that ought to be separate; and that the investigators were proceeding with a high hand and in an arbitrary and unconstitutional manner, as set forth in Case No. 10,378, discussed hereafter, especially in that certain salaried employees were being forced to testify against their wish and without access to their counsel, and as expert witnesses, depriving the power company of their services and the

value of their knowledge as witnesses.

We think this court has no jurisdiction to review such an order, and consequently no power to grant a stay of proceedings under it. Our normal jurisdiction is over appeals from the district courts. Special statutes have conferred special powers over other matters. Such special power is granted by § 313 of the Federal Power Act, 16 USCA § 825*l*, over orders issued by the Federal Power Commission. But it does not extend to mere preliminary or procedural orders such as this one is. Federal Power Commission v. Metropolitan Edison Co. (1938) 304 US 375, 82 L ed 1408, 24 PUR(NS) 394, 58 S Ct 963.

The petition must be dismissed.

[2] In Case No. 10,378, Mississippi Power Company and certain individuals, officers and employees of that company who have been called to testify and produce records under the order above discussed, sought relief in the United States district court in Mississippi where the investigation was conducting. They sued the investigators as individuals, alleging two of them to be citizens and residents of Maryland and two to be citizens and residents of Washington, D. C., all temporarily sojourning in Mississippi, and alleged the suit to be one of a civil nature between citizens of different states (the petitioners all being citizens of Mississippi), involving more than $3,000, "and further arises under the Constitution and laws of the United States." The prayers were for injunction and a declaration of rights. The Federal Power Commission and its members are not sued. The judge held, on the point being made by the defendants by motion to dismiss, that there was no jurisdiction over the persons of the defendants in the southern district of Mississippi and dismissed the complaint. This judgment is appealed from.

We have some misgivings about the citizenship of the two defendants who reside in Washington, but since the petition avers diversity of citizenship we assume they are citizens of some state other than Mississippi. Each is entitled to be sued in the district of which he is an inhabitant, with exceptions not here involved. 28 USCA § 112(a). The option, in cases where Federal jurisdiction is founded only on the fact that the action is between citizens of different states, to sue in the district of residence of the plaintiff does not avail here because the Federal jurisdiction rests also on the ground that the suit arises under the Constitution and laws of the United States. Citizens of one state sojourning in another state may ordinarily be sued in the courts of the latter state if they can be served with process there, but this is not true in the Federal courts.

[3] But appellants say the Federal Power Act, § 317, 16 USCA § 825p, copied in the margin[1] makes a special venue provision which governs here,

[1] "§ 825p. Jurisdiction of offenses; enforcement of liabilities and duties

"The district courts of the United States, the district court of the United States for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder. Any criminal proceeding shall be brought in the district where-

and authorizes suit "to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder," either "in the district wherein any act or transaction constituting the violation occurred," or "in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found." We thus are brought to the question whether this is a suit to enjoin a violation of the Federal Power Act or a rule, regulation, or order thereunder. We think it is not. No rule or regulation is referred to. No provision of the act is pointed to as violated by the defendants. The order which appointed them to make this investigation alone is alleged to be violated. The violation consists in this: The books and files of the power company produced for examination are demanded to be left in the possession of the investigators; the officers and employees of the company are about to be made to commit themselves on the questions towards which the investigation is pointed, making them less valuable as witnesses to the company if and when a trial of those questions is undertaken by the Commission; these witnesses have not been, on demand, allowed their own counsel to be present when they testify, to advise them what they may be compelled to answer; they are not allowed a copy of their testimony, but only to read it over and correct it; the inquiry is not a public but a secret one; so that constitutional rights are invaded and irreparable injury is about to be inflicted. These wrongs, if wrongs or abuses, are not violations of the act or an order pursuant to it. The orders which the district court is given exclusive jurisdiction to enforce or enjoin are definitive orders, establishing rights and duties, such as may be reviewed before the circuit court of appeals or enforced under §§ 314 and 315, 16 USCA §§ 825m and 825n. The order there is an ex parte procedural one, establishing no rights and imposing no duties within the meaning of these sections. The remedy for attempted abuses of power in a hearing such as this, is to refuse compliance, unless ordered thereto by proceedings under § 307(c), 16 USCA § 825f(c). The remedy against the persons conducting the investigation here attempted is not within the venue provision relied on.

The dismissal of the petition is affirmed.

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in any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in §§ 225 and 347 of Title 28. No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this chapter."

NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

Re Republic Light, Heat & Power Company, Incorporated

(265 App Div 53, 37 NY Supp(2d) 947.)

Accounting, § 4 — Powers of Commission — Depreciation reserve.

1. The amount and manner in which a reserve for depreciation is set up is solely within the control of the utility so far as the uniform system of accounts and the Commission's power in connection therewith are concerned, p. 286.

Accounting, § 19 — Payment for extension — Depreciation — Profit.

2. The entire construction cost of a gas extension, made under an agreement that a payment (exceeding such cost) should belong to the utility unless the customer purchases a stated amount of gas, should be taken from capital account and credited to depreciation reserve upon the abandonment of the extension, and the profit included in the customer's payment in excess of construction cost should be recorded in the capital account, "Earned Surplus," p. 286.

[November 11, 1942.]

REVIEW *of Commission order regulating accounting entries relating to abandoned gas extension; order annulled and matter remitted to Commission.*

APPEARANCES: Killeen & Sweeney, of Buffalo, and John Howell (Henry W. Killeen, of Buffalo, of counsel), for petitioner; Gay H. Brown, of Albany (Sherman C. Ward and Harry T. O'Brien, Jr., both of Albany, of counsel), for respondent.

Before Hill, P. J., and Crapser, Bliss, Schenck, and Foster, JJ.

HILL, P. J.: Review sought by petitioner, Republic Light, Heat and Power Company, Inc., hereinafter called "Republic," of an order made by the Public Service Commission. The matter was transferred by the special term to this court for consideration under § 1296, Civil Practice Act, Pars. 6 and 7. The only issue or controversy involves the proper bookkeeping entries to be made in connection with $382, consideration received by Republic from the American Locomotive Company in 1931 for an extension main to the latter's Dunkirk plant. It was agreed that the fund would belong to Republic unless the Locomotive Company purchased 3,000,000 cubic feet per annum, then it was to be refunded. At no time up to 1940, when its use of gas ceased, did it take that amount.

The Commission and Republic disagreed as to the account in which the record of this transaction was to be kept during the nine years when the ownership was in suspense and the transaction could not finally be cleared from a bookkeeping standpoint. It is not necessary to recite the history of this controversy, or to hazard an opinion as to which of the contenders presented the correct solution. In determining the final entries to be made in this now closed transaction, it is necessary to consider that the cost of construction in 1931 was $191.94, leaving $190.06 a profit to Republic, or a "windfall" of some kind.

[1, 2] The order under review requires that the final entry shall be—

Contributions in Aid of Construction	Dr.	$382.00
to		
Reserve for Depreciation of Gas Plant in Service	Cr.	115.07
Unearned Surplus,	Cr.	266.93

The computation which determined that $115.07 should be credited to Reserve for Depreciation is somewhat involved. That amount remains after deducting $76.87 from $191.94, the cost of the extension. The deduction is 40.05 per cent of the cost which, according to the Commission, already theoretically has been charged off from capital (plant account) and credited to Depreciation Reserve. The percentage (40.05) is the ratio which the December 1939 depreciation reserve of $2,767,447.08 bore to the book cost of the depreciable property, $6,909,-130.24, the theory of the Commission being that such a depreciation reserve existing, the proportionate part of it must have to do with this $191.94 item. This, of course, is entirely theoretical. There is no fact presented which indicates that there was actual depreciation up to the time that the extension was abandoned. So far as the Uniform System of Accounts and the Commission's power in connection herewith are concerned, the amount and manner in which a reserve for depreciation is set up is solely within the control of the utility. New York Edison Co. v. Maltbie (1936) 271 NY 103, 15 PUR(2d) 143, 2 NE (2d) 277; affirming (1935) 244 App Div 685, 9 PUR(NS) 155, 281 NY 223. The agreement between Republic and the Locomotive Company indicated that the sale of gas to the latter, having in mind the extension necessary, would not be profitable until the three million cubic feet per annum limit was reached, and as a depreciation reserve largely accrues from operating receipts, the company would have the right to withhold from the reserve any part of the payments made by the Locomotive Company for gas delivered awaiting the eventuality in the contract to determine the ownership of the fund. The extension now being useless and abandoned, the entire cost rather than $115.07 thereof, should be taken from the capital account and credited to Depreciation Reserve. The fact that, until 1940, under the contract it was unknown whose money would be used to pay for the extension, militates against the theory of an annual straight line depreciation charge against this item. According to the Commission, any balance over depreciation should be placed in the "Unearned Surplus" account. This item is not within the description of that account contained in the Uniform System definition,

which follows: "This account shall include all surplus not classified herein as earned surplus. It shall include surplus arising from the acquisition of the utility's capital stock, from donations by stockholders of the utility's capital stock, from a reduction of the par value of the utility's capital stock, and from the forgiveness of debts of the utility."

The amount received in excess of the cost of original construction properly belongs in Account 615, which, it is stated, "covers such items as fees and charges for changing, connecting and disconnecting service, profit on the sale of materials and supplies not ordinarily purchased for resale. . . ." This is declared to be an operating revenue that the utility is "entitled to receive from furnishing gas utility service and other service incidental thereto. . . ." From the payment made, Republic was required not only to construct the extension but to maintain it. This might have been relatively substantial, as the extension passed under a railroad track. These two corporations dealt at arm's length. A credit balance at the end did not indicate improper action by Republic, for it is not illegal for a utility to make a profit. This profit should be recorded in the capital account 271, "Earned Surplus," which is defined, "This account shall include the balance either debit or credit of unappropriated surplus arising from earnings." The books of the utility are historical and should reflect what has happened. The Commission is without power to use the Uniform System of Accounts to regulate the transactions. Should the accounts, kept honestly and historically, disclose irregularities within the field of control exercised by the Commission, corrective and regulatory proceedings may be instituted.

The order of the Commission should be annulled with $50 costs and disbursements, and the matter remitted for the making of an order in accordance with the foregoing.

Order annulled on the law, with $50 costs and disbursements and matter remitted to the Public Service Commission.

All concur.

WISCONSIN SUPREME COURT

City of Milwaukee

v.

Public Service Commission et al.

(— Wis —, 5 NW(2d) 800.)

Public utilities, § 57 — Municipal plants — Extraterritorial service.

1. A municipal utility which extends its service beyond the corporate limits becomes a utility outside the city limits to the extent of its holding out

as such, and the geographical scope of this holding out must be measured by the terms and limitations of the contract with the town by which the service was extended, p. 290.

Public utilities, § 57 — Municipal plants — Extraterritorial service.

2. A municipal utility which by contract with an adjoining town served small, isolated, and precisely limited portions of the town did not become a utility in the town as a whole so as to be bound to extend service to the whole town pursuant to Commission order, notwithstanding that even if the contract were canceled, the municipal plant would be compelled to continue to serve the contract customers upon a utility basis, p. 290.

Service, § 204 — Extensions — Municipal plant — Extraterritorial service.

3. A resolution of city council to induce outlying communities to drop support of a proposed metropolitan water district if the city would extend service to portions of the towns that had shown an intention to become annexed to the city, or in individual cases, according to the merits of the case, did not evidence an intention of the city to extend service into the towns as a whole so as to be bound to do so pursuant to Commission order, p. 290.

Service, § 204 — Extensions — Municipal plant — Extraterritorial service.

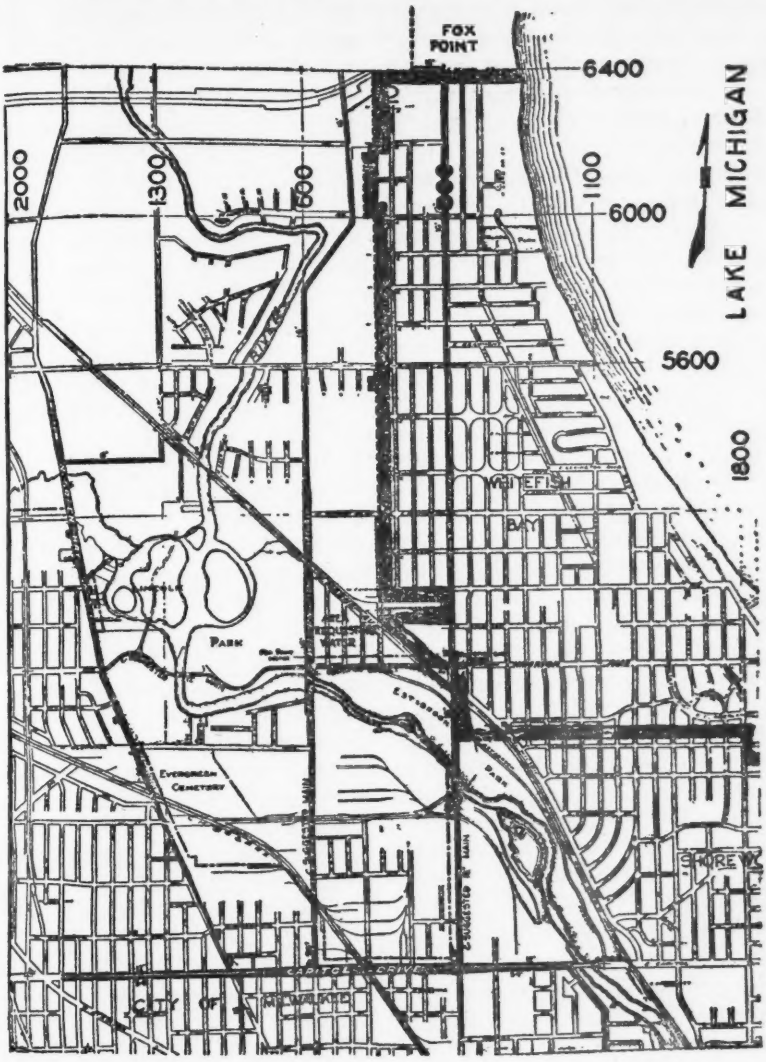
4. A municipal plant which is in no position to keep other utilities out of a town upon any claim to an indeterminate franchise does not have a duty to extend service in the town beyond the limits of its holding out evidenced by its contract with the town, and when the holding out is not coextensive with the limits of the town, it cannot be treated as a utility in the town as a whole, p. 290.

[October 13, 1942.]

APPEAL *from judgment dismissing municipality's action against Commission requiring it to extend utility service to adjoining towns; reversed.*

APPEARANCES: Walter J. Mattison, City Attorney, and Joseph L. Bednarek, Assistant, City Attorney, both of Milwaukee, for appellant; C. R. Dineen, of Milwaukee (James E. McCarty, of Milwaukee, of counsel), for respondent town of Milwaukee; John E. Martin, Attorney General, and Newell S. Boardman and H. T. Ferguson, Assistant Attorneys General, for respondent Public Service Commission.

WICKHEM, J.: By order of the Public Service Commission, plaintiff city of Milwaukee was required to extend its water service in the town of Milwaukee to certain described premises in the town. Plaintiff (1) denies the jurisdiction of the Public Service Commission to compel the extension, (2) assuming jurisdiction in the Commission, objects to the reasonableness of the order upon the grounds that the costs and difficulty of furnishing service is out of proportion to the needs for service involved, and (3) contends that the rate ordered will occasion loss to the plaintiff and constitute a burden upon its customers. The following are the facts necessary to an understanding of the controversy:



The city of Milwaukee operates a water works utility. By contract with the town of Milwaukee it had extended service to residents of the town residing in certain streets in a limited area. This was in the vicinity of Green Bay avenue. Under the terms of this contract, the town of Milwaukee laid mains at its own cost to the Milwaukee city limits, and connected with the Green Bay avenue feeder main. This contract expressly pro-

hibited the town from extending its main to any other streets than those described in the contract, or to sell or to deliver water to any other individual or property. The town of Milwaukee also received some water from the city of Milwaukee utility as a result of a contract with the village of Fox Point. The village of Fox Point takes water from the Milwaukee utility and in order to get the water constructed a main along the Port Washington road in the town of Milwaukee to connect with the Milwaukee main at Hampton avenue. As a part of its easement agreement with the town of Milwaukee, residents of the town abutting the Port Washington road were permitted to obtain water from the main for domestic uses only. The city of Milwaukee consented to this use and the contract restricted the town to one-inch mains and four fire hydrants. The point at which the Fox Point pipe connects with the Milwaukee main is the intersection of Hampton avenue and Port Washington road. The Milwaukee main runs from this point east for half a dozen blocks to Santa Monica avenue where it connects with a main running north from East Capital Drive extending along Santa Monica avenue the full length of the village of White Fish bay and serving that village. The area seeking service in this case is a small triangular tract beginning on the east side of the Port Washington road, a short distance north of Hampton avenue, extending north to West Marne avenue, thence southeasterly to north Second street, thence south, to a point slightly north of Hampton avenue. This is a real-estate subdivision and the impetus to get water comes from the desire of the promoters for the advantages of city water. The tract is twenty-nine acres in extent, appears to cover four platted blocks, and has upon it thirty-three homes and one hundred one vacant lots. The estimated population will be 549 people when fully built up. One of the city's objections to serving this area, which presently is getting its water from private wells, is that the pressure on the Santa Monica, Hampton, Fox-Point line is not enough to take care of any more customers in the town of Milwaukee, and that as a result a 10-inch main off the Green Bay road running east to Hampton avenue would have to be built or a main which runs for a couple of blocks on the Port Washington road north from East Capitol Drive would have to be extended north to the intersection of the Port Washington road and Hampton avenue. The construction of either main would require the expenditure of from thirty to forty thousand dollars and the mains when so constructed would be of considerably greater capacity than necessary or proper to serve the area presently requesting water. It is claimed that to require the expenditure would be unreasonably burdensome upon plaintiff; that at present rates, plaintiff could not possibly earn on this investment; that the number of people demanding service is so small and the prospects of their increasing so slight that this service cannot be furnished economically and would have to be recompensed for by rates much above those charged currently by the plaintiff.

[1–4] Plaintiff assumes that the question is whether the Public Service Commission has jurisdiction to compel

a municipally owned waterworks utility to extend its service into an adjoining township and render water service in a new area. The question is narrower than this. It is whether a municipal utility which, by contract with an adjoining town, has assumed to serve small, isolated and precisely limited portions of a town, has become a utility throughout that entire town, and bound to extend its service in response to orders of the Public Service Commission. In Pabst Corp. v. Milwaukee, 190 Wis 349, PUR1926D 290, 208 NW 493, 45 ALR 1164, it was held that the city of Milwaukee was a municipal water utility, subject to regulation and control by the Railroad Commission. This, of course, is conceded by plaintiff, but is claimed to be wholly immaterial in this case, and we agree that the Pabst Case does not touch the precise question that concerns us here. The city of Milwaukee is a municipal water utility, but the question here is whether it is such a utility in the town of Milwaukee as a whole. We are of the view that if the Milwaukee utility by extending its service beyond the limits of the municipality became a utility outside its boundaries to the extent of its holding out as such, the geographical scope of this holding out must be measured by the terms and limitations of the contract with the town by which the service was extended. See Milwaukee v. West Allis (1935) 217 Wis 614, 258 NW 851, 259 NW 724; Milwaukee v. West Allis, 236 Wis 371, 38 PUR (NS) 387, 294 NW 625. Thus, in the West Allis Cases, cited *supra*, where the city of Milwaukee agreed by contract to furnish the West Allis utility with water for the convenience of the patrons of that utility, termination of the contract was held not to terminate the duty of the Milwaukee utility to continue at a rate to be fixed by the Public Service Commission to serve the water needs of the community which by contract it had undertaken to serve. See also, in this connection, Wisconsin Traction, Light, Heat & P. Co. v. Green Bay & M. Canal Co. (1925) 188 Wis 54, 205 NW 551. In the West Allis Case it will be noticed that the city of Milwaukee undertook to supply the entire municipality which had contracted for water service.

The case of the town of Milwaukee is quite different. Here, to paraphrase the language of Wisconsin Gas & E. Co. v. Railroad Commission (1929) 198 Wis 13, 222 NW 783, the Milwaukee utility has done precisely what it was necessary for it to do to prevent it from becoming a public utility in the town as a whole. It serves only two small and isolated portions of the town under special contracts. The first and principal portion is that along Port Washington avenue. The service to this portion is in response to the obligations of a carefully limited contract entered into as an incident to the city's effort to serve the village of Fox Point, and in response to the necessities of getting an easement from the town of Milwaukee. The contract limits the service to those residences abutting on the Port Washington road and a few fire hydrants. The only other service is a short line brought to the city limits by the town of Milwaukee in the vicinity of Green Bay avenue, and as to this, the agreement for service is also narrowly prescribed as to territory and scope. The city has never constructed any equipment for extend-

ing service beyond its boundaries and into the town of Milwaukee. It has declined to enter into a special contract with the town broader in geographical extent than the very narrow limits of the contracts heretofore referred to. Having by contracts agreed to serve those residents of the town of Milwaukee abutting the Port Washington road and those included in the territory covered by the Green Bay avenue extension, the Milwaukee utility under the doctrine of the West Allis Cases may find even if its contract be canceled that it must continue to serve contract customers upon a utility basis. We think, however, that this is a far cry from the conclusion that the city of Milwaukee has become a utility in the town of Milwaukee as a whole. Such a holding would mean that it is within the jurisdiction of the Public Service Commission to compel Milwaukee to construct mains in the town of Milwaukee, and to cover the entire territory in accordance with the needs of its population. This is so out of line with every limitation put by the city upon its holding out that we think it cannot be sustained. Such a holding would put an extraordinary burden upon the Milwaukee utility, and when it is considered that the authorization to municipal utilities to extend service outside their boundaries was originally based upon the theory that they should be permitted to dispose of surplus water, it would be completely at variance with the basis and purpose of the authorization. In this connection, see Attorney General v. Eau Claire (1875) 37 Wis 400; Wisconsin v. Eau Claire (1876) 40 Wis 533.

Much reliance is put upon the resolution of the city council of Milwaukee enacted on June 20, 1927. This resolution recited in substance that since it was necessary for the city to terminate contracts for water existing between the city and West Allis, North Milwaukee and the village of Shorewood, that whereas the purpose of the resolution had been misunderstood by outlying municipalities, and whereas there are in existence certain physical connections between the Milwaukee utility and the public utilities of the outlying cities, and whereas a bill is pending in the legislature to create a metropolitan water district outside the city of Milwaukee largely because of the cancellation of the contracts, and whereas there has been a conference and agreement between the representatives of the city provided the city evidences willingness to furnish water to the outlying utilities of the villages, towns and cities named, it is resolved that the city of Milwaukee express its willingness to these municipalities to furnish them provided a rate is kept in existence by the Railroad Commission of Wisconsin. It was further resolved that the city of Milwaukee supply water to town territories in the future as in the past by extending service as soon as owners of such territory shall declare their intention by signing petitions for annexation when presented; that the council will, however, give serious consideration to any application of any town for water if proper plans are presented and may in its judgment furnish water to towns upon the merits of each case. The general purpose of the resolution was doubtless to allay the fears of outlying communities and to induce them to drop support in the legislature of a bill to create a metropolitan water district. The city

carefully circumscribed its promises by stating that it would extend service in towns to portions of the town that had evidenced an intention to become annexed to the city, or in individual cases, according to the merits of the case. This is pretty thin support for a holding that Milwaukee has anywhere or at any time evidenced an intention to extend into towns as a whole. The situation in towns is quite different from that in cities and villages. It is held in South Shore Utility Co. v. Railroad Commission, 207 Wis 95, PUR1932B 465, 240 NW 784, that there is no such thing as an indeterminate permit in a town and that there may be several utilities in the town, each presumably under a duty to serve within the limits of its undertaking.

That is the situation here. The city is in no position to keep another water utility out of the town, upon any claim that it has an indeterminate franchise there. Neither has it the duty to extend its service in the town beyond the limits of the holding out evidenced by its contract, and since the holding out is not coextensive with the limits of the town, it cannot be treated as a utility in the town as a whole. See, in this connection, Valcour v. Morrisville (1936) 108 Vt 242, 15 PUR (NS) 428, 184 Atl 881; Johnstown Water Co. v. Public Service Commission, 107 Pa Super Ct 540, PUR1933C 163, 164 Atl 101.

For the foregoing reasons, judgment must be reversed and cause remanded with directions to vacate and set aside the order of the Public Service Commission.

Judgment reversed and cause remanded with directions to vacate and set aside the order of the Public Service Commission.

Nelson, J., not participating.

SOUTH DAKOTA SUPREME COURT

Re Northwestern Bell Telephone Company

[No. 8509.]

(— SD —, 6 NW(2d) 165.)

Return, § 6 — Basis — Income — Fair value.

1. The basic facts necessary to determine the rate of return of a telephone company are the net operating income under existing rates, an estimate of net operating income under proposed rates had they been in effect, and the fair value of the exchange plant devoted to the exchange service, p. 296.

Return, § 1 — Determination.

2. The rate of return is determined by dividing net income by the fair value of the property, p. 296.

Apportionment, § 7 — Telephone — Toll and exchange use of local facilities.

3. An order requiring a telephone company to include in its exchange

service and rates the use of local facilities by exchange subscribers in making and terminating toll calls in effect denies the company the right to charge for the use of local facilities in its intrastate toll rates and, therefore, precludes reimbursement from toll income of any sum whatever for the use of exchange facilities, p. 297.

Appeal and review, § 33 — Scope of review — Trial de novo.

4. That the statute makes no reference to the conclusiveness of findings of fact by the Commission is no ground for saying that the legislature intended the appellate court to try a case de novo, weigh the evidence, consider matters of a purely administrative nature, and substitute its discretion for that of the Commission, p. 298.

Appeal and review, § 32 — Scope of review — Commission decision.

5. Judicial action cannot supplant the discretionary authority of the Commission; review by a court exercising judicial functions only cannot extend beyond the questions whether the Commission has acted within its constitutional or statutory powers and whether its order or determination is supported by substantial evidence and is reasonable and not arbitrary, p. 298.

Constitutional law, § 15 — Confiscation.

6. Confiscation is merely the taking of private property without just compensation, and offends the Constitution, p. 299.

Return, § 50 — Confiscation.

7. The use of property is taken when the legislature or its administrative agency prescribes rates for a public utility, and just compensation is a reasonable rate of return upon the value of the property at the time it is being used for the public service, p. 299.

Return, § 16 — Right to earn.

8. A utility is entitled to rates that will yield a reasonable rate of return after payment of operating expenses, taxes, and financial charges, for the use of the property devoted to public service; and anything less than that is unfair and unreasonable, p. 299.

Return, § 22 — Reasonableness — Factors considered.

9. The Commission may use as guides, in determining a fair and reasonable rate of return, holdings that return should equal that demanded by investors on investments having comparable business risks, that it should be sufficient to assure confidence in the financial soundness of the utility and adequate to maintain its credit and to raise money necessary for the proper discharge of its public duties, that it should be something more than current interest on mere investment and should be sufficient to provide a surplus after paying reasonable dividends, and that it should be more than the rates of yield on bonds which are substantially less than a reasonable rate for a utility, p. 300.

Return, § 113 — Telephone company — Confiscation.

10. A rate of return of 3½ per cent in the case of a telephone company was held to be confiscatory, p. 300.

Appeal and review, § 53 — Grounds for reversal — Denial of procedural due process.

11. The court may set aside a Commission order for errors of law or irregularities of procedure; there is such a thing as procedural due process in administrative proceedings, p. 301.

Apportionment, § 7 — Telephone — Local and exchange — Reimbursement toll fund.

12. The injection by the Commission of a so-called reimbursement toll fund into the net earning sum of a telephone company under existing rates was held to be an error of law in a proceeding wherein the company sought an increase in exchange rates, p. 301.

Valuation, § 330 — Going concern value — Reproduction cost.

13. Rejection of going concern value is erroneous when, in using the reproduction cost new method to determine fair value, the Commission does not appraise the exchange plant of a telephone company assembled as a whole and cover in its finding the item of going concern value, although going concern value need not be separately stated and appraised as such, p. 301.

Valuation, § 330 — Going concern value — Property right.

14. Going value, which is the element of value in an established plant doing business and earning money over one not thus advanced, is a property right and should be considered as a factor in valuation of a rate base, p. 301.

Valuation, § 139 — Overheads — Interest during construction.

15. Interest during construction must be allowed and included in any rate base computation under the reproduction cost new theory, p. 302.

Valuation, § 406 — Procedure — Evidence.

16. A rate base cannot be fairly established as the basis of a fair rate of return if the only evidence on the subject is rejected or if facts and circumstances not established by the evidence are considered; such procedure is arbitrary and offends the constitutional guaranty of due process, p. 302.

[November 14, 1942.]

APPEAL *from Circuit Court judgment affirming Commission orders denying an increase in telephone rates; judgment reversed and proceeding remanded with directions.*

APPEARANCES: H. A. Poley, of Omaha, Neb., F. G. Warren, of Sioux Falls, and H. G. Burke, of Omaha, Neb., for appellant; Roy D. Burns, of Sioux Falls, and Wm. Williamson, of Pierre, for respondent Public Utilities Commission.

DENU, C. J.: On June 12, 1939, the Northwestern Bell Telephone Company, appellant herein, made application to the Public Utilities Commission of the state of South Dakota for authority to increase its Sioux Falls exchange rates. The proposed increase was from $4.50 to $5.50 per month for 1-party business rates; from $3.50 to $4.50 per month for 2-party business rates; from $2.50 to $2.75 per month for 1-party residence rates, and from $2.25 to $2.50 per month for 2-party residence rates. The company also proposed to introduce a new type of service called "Incoming Line Service" at $4.50 per month, to accommodate the needs of a part of its busines subscribers. These new rates were to go into effect on July 28, 1939.

In its application for authority to so increase its exchange rates, the tele-

phone company alleges that the existing exchange rates were unjust and unreasonable and had not for several years last past produced a fair return on the fair value of its exchange property. The application also alleges that the proposed increased exchange rates would yield no more than a fair return on the fair value of its Sioux Falls exchange property.

A hearing before the Public Utilities Commission was duly had on the telephone company's application at Sioux Falls, South Dakota, on September 12, 1939, at which hearing evidence was introduced by the company, the Commission, and the city of Sioux Falls. On October 23, 1940, the Commission filed its report and made and entered its order to the effect that the existing exchange rates in Sioux Falls were adequate and reasonable, and dismissed the company's application for increased rates. A rehearing, applied for by the company, was, by order, denied by the Commission on January 11, 1941. The company thereupon appealed from the orders of the Commission to the circuit court of Minnehaha county, South Dakota, and on October 7, 1941, that court, after hearing, filed its decision and judgment, affirming the Commission's orders of October 23, 1940, and January 11, 1941. It is from that decision and judgment of the circuit court that this appeal is taken by appellant company.

The assignments of error challenge the decision and judgment of the circuit court, and the orders of the Commission, on the ground, among others, that such orders of the Commission are unreasonable and deny the company the opportunity to earn a fair rate of return on the fair value of its Sioux Falls exchange property, in violation of statute and the due process clause of the state Constitution. In other words, the issue of confiscatory rates, as distinguished from compensatory rates, is expressly presented by the record of this case.

[1] It appears from the transcript of the testimony and the report of the findings of the Commission that the company's net operating income under existing rates; an estimate of the net operating income under the proposed rates, had they been in effect; and the fair value of the company's Sioux Falls exchange plant, devoted to the exchange service, were the three essential facts sought to be established. Obviously these are the basic facts necessary to determine the rate of return.

[2] The Commission found that the net operating income of the company for 1938, under existing rates, was $30,653.20, and that the fair value of the company's property, used in exchange service at Sioux Falls, was $876,110. It also found that under the proposed exchange rates the net operating income would have been $64,005.75. The Commission did not compute the rate of return, and there is no specific finding in its report showing what the rate of return is. But the rate of return is determined by dividing net income by the fair value of the property. If we do that, the rate of return is 3½ per cent, computed on what the Commission found to be net operating income and the fair value of property.

The Commission's report shows that its net income figure of $30,653.20 was reached by taking from the toll income of the company for alleged use of ex-

change facilities making toll calls, the sum of $5,393.47 and weaving this sum into the actual net income of the exchange service, to wit, $26,417.49, reflected in the books and records of the company. These books and records were examined by two expert accountants, one called as a witness by the company and one by the Commission. They agreed that the books of the company showed a net income of $26,417.49 for 1938 for exchange service under existing rates. There is no other testimony in the record on this subject.

[3] It appears also that on May 11, 1926, the Commission had made an order, which is still in effect, requiring the company to include in its exchange service and rates the use of local facilities by exchange subscribers in making and terminating toll calls. The order, in effect, denies the company the right to charge for the use of local facilities in its intrastate toll rates. It, therefore, precludes reimbursement from toll income of any sum whatever for the use of exchange facilities.

The undisputed proof establishes the figure of $26,417.49 as the net income for exchange service for the year 1938 under existing rates, as shown by the company's books and the testimony of the accountants who examined those books.

In estimating the net income under the proposed rates, the Commission likewise included the toll reimbursement sum aforesaid.

The Commission found that the fair valuation of the company's exchange property was $876,110. The book cost of the company's exchange plant was admittedly $1,155,889.26. But this basis, though recognized frequently by the courts as a proper basis of valuation, was not used by the Commission, nor urged by the company, for the obvious reason that it gives a much greater value than the so-called "reproduction cost new" basis. It was this latter basis or method which the Commission adopted to measure the fair value of the exchange plant, and this method, in which it is determined what it would cost to reproduce the plant at the present time, less accrued depreciation, is also recognized by the courts as a proper way to ascertain fair value of a utility's property as the rate base. The figure of $876,110, found by the Commission, is in sharp conflict with the estimate made by the Commission's own witness, Hamilton, who found the fair value to be $947,731, and by the company's witness, Cronland, who found that value to be $967,208. The difference between the Commission's figure of fair valuation and Hamilton's and Cronland's figures is accounted for by the Commission's exclusion of part of the computed interest sum during construction allowed by the witnesses, and the Commission's rejection of going concern value, also allowed by both witnesses. The difference between Hamilton's and Cronland's figures is accounted for by Hamilton's restrictions of what should be allowed for working capital requirements. The record shows that Hamilton is an engineer with many years' experience, and that Cronland is an accountant with many years' experience. They are the only witnesses who testified on fair valuation, which was ascertained by the reproduction cost new method adopted by the Commission. The result of the calculations, employing the figures of the

Commission as to net income and fair valuation, is a rate of return of 3.5 per cent under existing rates and 7.3 per cent under the proposed rates; and employing the figures of Hamilton and Cronland the rate of return is 2.76 per cent under existing rates and 5.92 per cent under the proposed rates.

The statutes of this state provide for appeals from the Commission to the circuit court, and from the circuit court to the supreme court, and for a trial in the appellate courts upon the record made before the Commission.

"In all actions or proceedings in which the validity, lawfulness, or reasonableness of any final order or determination of the Public Utilities Commission shall in any wise come in question, the original or certified copy of the final record made before said Commission shall constitute the record in said cause, and no new evidence shall ever be received or introduced; but the case shall be heard and determined upon the final record provided for in this chapter." SDC 52.0502.

"The circuit court in its determination of said cause may affirm, reverse, or modify, such order or determination of said Commission, or remand the cause to the Public Utilities Commission with directions for further proceedings." SDC 52,0504.

The appeal from the circuit to the supreme court is likewise heard on the settled record made before the Commission, and such appeal to the supreme court is the exclusive remedy to review, reverse, correct, or annul any action of the Commission. SDC 52.-0505 and SDC 52.0506.

[4] That the statutes make no reference to the conclusiveness of the findings of fact by the Commission is no ground for saying that the legislature intended the circuit or supreme court to try the case de novo, weigh the evidence, consider matters of a purely administrative nature and substitute its discretion for that of the Commission. Re Dakota Transportation (1940) 67 SD 221, 35 PUR(NS) 442, 449, 291 NW 589, 594.

[5] On the contrary, this court holds that: "In a proceeding to review an order of the Commission, administrative or legislative in nature, judicial action cannot supplant the discretionary authority of that body. The review by the court exercising judicial functions only cannot extend beyond the questions whether the Commission has acted within its constitutional or statutory powers and whether its order or determination is supported by substantial evidence and is reasonable and not arbitrary."

The case just cited refers with approval to the decision of the United States Court in St. Joseph Stock Yards Co. v. United States (1936) 298 US 38, 80 L ed 1033, 14 PUR (NS) 397, 56 S Ct 720, 725, holding that an exception of the rule of finality is recognized where constitutional questions with respect to confiscation of property are involved.

The state Constitution (Art. VI, §§ 2 and 13) and the United States Constitution (Amendments V and XIV) provide alike that no person shall be deprived of life, liberty, or property without due process of law, and that private property shall not be taken without just compensation.

These constitutional provisions have been many times applied by the courts in public utility cases in which it was

sought to fix rates. Perhaps the strongest and the best language of its application is found in the opinion of Chief Justice Hughes in St. Joseph Stock Yards Co. v. United States, *supra*, 14 PUR(NS) at pp. 403, 404. The opinion says: "The fixing of rates is a legislative act. In determining the scope of judicial review of that act, there is a distinction between action within the sphere of legislative authority and action which transcends the limits of legislative power. Exercising its rate-making authority, the legislature has a broad discretion. It may exercise that authority directly, or through the agency it creates or appoints to act for that purpose in accordance with appropriate standards. The court does not sit as a board of revision to substitute its judgment for that of the legislature or its agents as to matters within the province of either. . . . When the legislature itself acts within the broad field of legislative discretion, its determinations are conclusive. When the legislature appoints an agent to act within that sphere of legislative authority, it may endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily. . . .

"But the Constitution fixes limits to the rate-making power by prohibiting the deprivation of property without due process of law or the taking of private property for public use without just compensation. When the legislature acts directly, its action is subject to judicial scrutiny and determination in order to prevent the transgression of these limits of power. The legislature cannot preclude that scrutiny or determination by any declaration or legislative finding. Legislative declaration or finding is necessarily subject to independent judicial review upon the facts and the law by courts of competent jurisdiction to the end that the Constitution as the supreme law of the land may be maintained. Nor can the legislature escape the constitutional limitation by authorizing its agent to make findings that the agent has kept within that limitation. Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although the evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards. That prospect, with our multiplication of administrative agencies, is not one to be lightly regarded."

[6–8] Confiscation is merely the taking of private property without just compensation, and offends the Constitution. If the property itself is taken by eminent domain, just compensation is its value at the time of taking. If the legislature, either by its own act or through the creation of an administrative agency, prescribes rates or charges for a public utility, the use of the property is taken, and just compen-

sation is a reasonable rate of return upon the value of the property at the time it is being used for the public service. In other words, a utility is entitled to rates that will yield a reasonable rate of return after payment of operating expenses, taxes, and financial charges, for the use of the property devoted to public service. Anything less than that is unfair and unreasonable. West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 79 L ed 1640, 8 PUR(NS) 433, 55 S Ct 894; Public Utility Comrs. v. New York Teleph. Co. 271 US 23, 70 L ed 808, PUR1926C 740, 46 S Ct 363; Baltimore & O. R. Co. v. United States (1936) 298 US 349, 80 L ed 1209, 56 S Ct 797.

[9] Many expressions are found in the decisions as to what amounts to a fair or reasonable rate of return. Thus it is said in effect that the rate of return should equal that demanded by investors on investments having business risks comparable to the utility in question. Willcox v. Consolidated Gas Co. (1909) 212 US 19, 53 L ed 382, 29 S Ct 192, 48 LRA(NS) 1134, 15 Ann Cas 1034. It should be sufficient to assure confidence in the financial soundness of the utility and adequate to maintain its credit and to raise money necessary for the proper discharge of its public duties. Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 67 L ed 1176, PUR1923D 11, 43 S Ct 675. It should be something more than current interest on mere investment, and should be sufficient to provide an amount to be passed to the surplus account after paying reasonable dividends. United R. & Electric Co. v. West, 280 US 234, 74 L ed 390, PUR1930A 225, 50 S Ct 123. It should be more than the rates of yield on bonds which are substantially less than a reasonable rate for a utility. McCardle v. Indianapolis Water Co. (1926) 272 US 400, 71 L ed 316, PUR1927A 15, 47 S Ct 144. These holdings may serve the Commission as guides in determining a fair and reasonable rate of return.

We have found many cases holding rates of return of utilities ranging from 6 per cent to 8 per cent to be fair and reasonable. Respondent's counsel have cited one case where a state court held a return of 5 per cent reasonable, and a Federal decision, thirty-three years ago, holding that 6 per cent, embracing 2 per cent for depreciation, could not be deemed confiscatory under the facts and circumstances of that case. They also cite the decision of the Commission for the state of Washington in Department of Public Service v. Pacific Teleph. & Teleg. Co. (1940) 37 PUR(NS) 321, to the effect that 4½ per cent was a fair rate of return for the telephone company. But that decision of the Commission was reversed by the superior court of Washington, declaring that rate confiscatory and that "a fair return upon such fair value is not less than 6 per cent." We have found no court or Commission which ever held that a rate as low as 3½ per cent was a fair or reasonable rate of return for a utility.

[10] In the light of these many decisions, we must conclude that the rate of return of 3½ per cent found by the Commission in this case is not a fair and reasonably return, but is clearly confiscatory. This conclusion compels a reversal of the judgment of the circuit court and a remanding of the

case to the Commission with instruction to approve a schedule of exchange rates that will yield a fair return on the fair valuation of the company's exchange property in Sioux Falls.

[11] In performing this important task, quasi judicial in character, we must remember that there is such a thing as procedural due process in administrative proceedings. In the concurring opinion of Justice Brandeis, in St. Joseph Stock Yards Co. v. United States, *supra,* it is said that an order of an administrative tribunal may be set aside for any error of law, substantive or procedural. The court may set aside an order for lack of findings necessary to support it; or because of findings made without evidence to support them; or because the evidence was such that it was impossible for a fair-minded board to come to the result which was reached; or because the order was based on evidence not legally cognizable; or because facts and circumstances which ought to have been considered were excluded from consideration; or because facts and circumstances were considered which could not legally influence the conclusion; or because it applied a rule thought wrong for determining the fair value of the property. These and other matters involve errors of law or irregularities of procedure. St. Joseph Stock Yards Co. v. United States, *supra.*

[12] The principles announced in the above opinion are applicable to some extent, at least to the record in this case. The injection by the Commission of the so-called reimbursement toll fund into the net earning sum of the company under existing rates is obviously an error of law.

[13, 14] The rejection by the Commission of the going concern value found by the expert witnesses to be $54,810 was an error, in view of the use by the Commission of the reproduction cost new method in determining fair value. It is true that there is no requirement that going concern value be separately stated and appraised as such, because valuations for rate purposes can be made by valuation of a business assembled as a whole without separate appraisal of the going concern element. But such value must be recognized. Federal Power Commission v. Natural Gas Pipeline Co. 315 US 575, 86 L ed 1037, 42 PUR (NS) 129, 62 S Ct 736, decided by the United States Supreme Court on March 16, 1942. But, admittedly, the Commission did not appraise the exchange plant assembled as a whole and cover in its finding the item of going concern value. It rejected that item in toto after accepting the estimate of its witness Hamilton on fair value, based on the reproduction cost new method less accrued depreciation. The language of the Supreme Court in the Natural Gas Pipeline Company of America Case, *supra,* is to the effect that going concern value must be allowed somewhere. It was held that it must be allowed under the reproduction cost new theory. Denver Union Water Co. v. Denver, 246 US 178, 62 L ed 649, PUR1918C 640, 38 S Ct 278; Pacific Teleph. & Teleg. Co. v. Whitcomb, 12 F(2d) 279, PUR 1926D 815. In the instant case it was allowed by the only witnesses who estimated the fair valuation and testified

at the hearing. The Commission erred in rejecting the only competent and undisputed evidence in the record on this subject. Going concern value is the element of value in an established plant doing busines and earning money over one not thus advanced. It is a property right and should be considered as a factor in valuation of a rate base. The witnesses properly allowed this item of value in determining the fair valuation of the company's exchange property.

[15] The expert witnesses likewise properly allowed interest during construction. Under the reproduction cost new theory, which assumes a rebuilding of the entire plant new, interest during construction, estimated in this case for two years, was and is a cost associated with reconstruction. Swancutt for the company, and Hamilton for the Commission, testified that the interest amount, computed at 2 per cent of the reproduction cost, was estimated by them to be about $37,000, which they allowed in their appraisement of the property. There is no dispute about the reasonableness of the rate of interest applied, nor the correctness of the computation made by these witnesses of experience. Yet the Commission rejected this undisputed testimony of the witnesses by eliminating $16,814 of the interest sum. Interest during construction must be allowed and included in any rate base computation under the reproduction cost new theory. Ohio Utilities Co. v. Public Utilities Commission, 267 US 359, 69 L ed 656, PUR1925C 599, 45 S Ct 259; Kings County Lighting Co. v. Prendergast, 7 F(2d) 192, PUR 1925E 5; Wisconsin Teleph. Co. v. Public Service Commission (1939) 232 Wis 274, 30 PUR(NS) 65, 287 NW 122, 593. If that interest is proper, there can be no legal reason for allowing only a third of the correct sum.

[16] A fair rate of return, on a fairly established rate base, supplies the correct test of reasonableness which is the ultimate issue. There can be no fairly established rate base if the only evidence on the subject is rejected, or if facts and circumstances not established by the evidence are considered. Such procedure is arbitrary and offends the constitutional guaranty of due process.

The judgment of the circuit court is reversed and the proceeding remanded to the Commission with direction to promptly approve a schedule of telephone exchange rates for the Sioux Falls exchange that will afford an opportunity to earn a fair rate of return on the fair value of its exchange property devoted to public service. No costs to be taxed.

Rudolph, P. J., and Polley, Roberts, and Warren, JJ., concur.

Denu, Circuit Judge, sitting in lieu of Smith, J., disqualified.

NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

Re Republic Light, Heat & Power Company, Incorporated

(265 App Div 74, 38 NY Supp(2d) 302.)

Intercorporate relations, § 2 — Cost of commodity — Contract for gas supply.

1. The cost to the seller must enter into the consideration of the just and reasonable charge by a wholesale company supplying gas to a public utility under contract, but cost to the seller is not necessarily the determinative factor, p. 307.

Intercorporate relations, § 2 — Cost of commodity — Contract for gas supply — Presumption.

2. Whatever is a fair and just price to the seller of gas is at least presumptively the fair and just price which a public utility purchaser buying the gas under contract may pay, p. 307.

Intercorporate relations, § 2 — Cost of commodity — Contract for gas supply — Competitive conditions — Market prices.

3. Competitive conditions and market prices and proper provision for the future must be taken into account in determining the just and reasonable charge to be made for gas purchased under contract by a public utility, although the day-to-day costs are not the only costs to be considered, p. 307.

Intercorporate relations, § 18 — Gas purchases — Payments to affiliates — Supply under contract.

4. The just and reasonable charge for gas purchased under contract by a public utility has to be considered and determined, pursuant to subdivision 4 of § 110 of the Public Service Law, Consol. Laws, Chap. 48, without reference to the fact that the parties to the contract are affiliates or non-affiliates; the rule for each and both is the same, p. 307.

Intercorporate relations, § 8 — Powers of Commission — Contract for gas — Conservation question — Industrial use.

5. The Commission, although having control over the sale of natural gas under subdivision 2 of § 66 of the Public Service Law (conferring the power of curtailing or discontinuing the use of gas for manufacturing or industrial purposes to conserve gas) has no power to determine that a contract for gas is not in the public interest simply if it provides or permits or if it results in gas being produced by a public utility being sold to an industry for industrial use, p. 308.

Commissions, § 17 — Jurisdiction — Declaration as to public interest.

6. The Commission is not given unlimited authority to declare for itself the matters and things which are and which are not in the public interest, p. 308.

Intercorporate relations, § 2 — Contract for gas supply — Public interest.

7. The just and reasonable charge as provided in subdivision 4 of § 110

of the Public Service Law, Consol. Laws, Chap. 48, is the determining factor as to whether a contract for purchase of a gas supply by a public utility is in the public interest or not in the public interest, p. 308.

Intercorporate relations, § 2 — Contract for gas supply — Reasonableness of price — Burden of proof.

8. The burden of proof as to the reasonableness of the price which a public utility has to pay to another company for a gas supply is, under subdivision 4 of § 110 of the Public Service Law, Consol. Laws, Chap. 48, upon such public utility company, p. 308.

Intercorporate relations, § 2 — Contract for gas supply — Reasonableness — Matters considered — Schedules.

9. The question of the schedules of a public utility is not before the Commission in a proceeding to determine whether a contract for the purchase of a gas supply is in the public interest, pursuant to the provisions of subdivision 4 of § 110 of the Public Service Law, Consol. Laws, Chap. 48, but the question is simply one as to the contract, p. 309.

Intercorporate relations, § 8 — Powers of Commission — Contract for gas supply Accounts of selling company.

10. The Commission, in determining whether a contract for the purchase of gas by a public utility from a business corporation is in the public interest, pursuant to subdivision 4 of § 110 of the Public Service Law, Consol. Laws, Chap. 48, must determine the price for gas on the financial setup of the business corporation and not upon some fancied setup under the Uniform System of Accounts which the public utility would have had to follow if it had gone forward in carrying on the business of producing gas itself, p. 309.

Valuation, § 135 — Overheads — Engineering fee.

11. A 5 per cent engineering fee paid for construction of gas mains was held to be a proper and reasonable charge in determining the propriety of a contract for the purchase of gas by a public utility from an affiliated business corporation, p. 310.

Valuation, § 410 — Evidence — Engineering fee — Opinion as to reasonableness.

12. Evidence of a qualified expert as to the reasonableness of engineering fees, in the absence of other evidence, should not be arbitrarily rejected as not being proof of the value of the services, p. 310.

Intercorporate relations, § 2 — Cost of gas supply — Reasonableness — Contract price.

13. A finding that 24 cents a thousand cubic feet shows a reasonable contract price for gas between two affiliated companies is not supported by the evidence when it is established that the actual charge paid by a public utility to the wholesale company for recent years has been 41.13 cents, 38.03 cents, and 33.5 cents; that gas has to be transported from 90 to 95 miles through a pipe line built by the seller at a large cost; that the public utility was paying on the average to local independents 29 cents per thousand cubic feet in cases where the independents were located directly at the pipe line; that the selling company paid to another corporation (an independent) 35 cents per thousand cubic feet; and that the public utility paid 52½ cents minimum for ten years to another independent company, p. 310.

(FOSTER, J., dissents.)

[November 11, 1942.]

RE REPUBLIC LIGHT, HEAT & POWER CO., INC.

REVIEW of Commission order disapproving contract for purchase of gas supply by public utility company; reversed. For Commission decision, see (1940) 35 PUR(NS) 94.

APPEARANCES: John Howell and Killeen & Sweeney, all of Buffalo (Henry W. Killeen, of Buffalo, of counsel), for petitioner; Gay H. Brown, of Albany (Raymond J. McVeigh, of Albany, of counsel), for respondent.

Before Hill, P.J., and Crapser, Bliss, Schenck, and Foster, JJ.

CRAPSER, J.: This proceeding brings up for review the determination of the Public Service Commission disapproving a contract dated July 23, 1938, between Republic Light, Heat and Power Company, Inc., and Penn-York Natural Gas Corporation, hereinafter called Republic and Penn-York.

The Republic was incorporated in 1921, it is a public utility engaged in the production, purchase, and distribution of gas, natural and manufactured; it operates in the western New York counties of Chautauqua, Erie, Niagara, and Genesee and in its distribution field are included fifty municipalities and hamlets. It has more than 22,000 customers. It has 238 producing wells on lands owned or leased by it. The gas sand underlying its wells and leases is mostly Medina sand and the fields are commonly referred to as Medina fields.

In addition to the gas from its own wells Republic purchased from local independent drillers gas and has so continued to do until the present time. In 1926 it was discovered that the Republic was being pinched for gas and that the Medina gas field was going down. A survey of its drilling operations showed that, taking the results over a period of years, more than 70 per cent of all wells drilled had turned out to be dry. It then made an arrangement and contract with the Iroquois Natural Gas Corporation for the purchase of sufficient gas to assure itself against the danger of sudden and acute shortage. The arrangement with Iroquois ran for ten years. In the first 5-year period the prices went to the top of 60 cents and went as low as 52½ cents per thousand cubic feet. For the second 5-year period all gas was taken and paid for at 52½ cents per thousand cubic feet. The Iroquois was also a distributor and the Republic interested itself in the proposition of buying its gas from the Penn-York and having the gas transported from the points of production to the distribution lines of Republic.

The Penn-York was created from two predecessor corporations. The Penn-York Natural Gas Company (New York state) was incorporated in 1931, the Penn-York Natural Gas Corporation (Pennsylvania) was incorporated in 1936, and in the same year the two corporations were merged to form the present company. The merged corporation subsists by virtue of the laws of the state of Pennsylvania. The Penn-York Company is not a public utility.

The certificate of the Pennsylvania corporation provided:

"The power to sell gas is expressly

limited to the sale of such gas at the mouth of the well or place of production under private contract and at wholesale only; and provided further that this corporation shall not engage in any public service business within the meaning of the Pennsylvania Public Service Company Law or exercise the power of eminent domain for any purpose."

A contract dated July 23, 1938, was entered into between the Republic and Penn-York in which there was recited, among other things, that the Penn-York being the owner of certain gas leases and wells in the county of Potter, Pennsylvania, and also the owner of gas pipe lines extending from its field in the town of Harrison, county of Potter, in the state of Pennsylvania, to the Republic's distribution system in the town of Alden, Erie county, New York, and the village of Forestville, Chautauqua county, New York, which pipe line was between 90 and 95 miles in length; and that the Republic being in need of gas the Penn-York agreed to sell at the mouth of the wells or place of production of gas in the state of Pennsylvania and to transport from Pennsylvania and to deliver to the Republic in New York its requirement of merchantable natural gas. Such delivery to the Republic to be through meters located near Forestville, Chautauqua county, New York, and in the town of Alden, Erie county, New York. The price to be paid therefor by the Republic to the Penn-York was 42 cents per thousand cubic feet for all gas so delivered except, first: for gas sold by the Republic to customers on its lines using large volumes of gas, second: gas furnished for industrial purposes being of the character of service known as "dump," and third: natural gas furnished to public institutions located in the territory covered by its various franchises. These three classes were provided for at a different price in the contract. The contract provided for the manner and place of removal of the gas sold.

It was of importance to both contracting parties not only that there should be gas sufficient for the immediate demand of the Republic but that there should be gas in reserve or storage to meet the demands of the future and to provide against the time when all the wells would not produce all the gas required currently, therefore, without making any change in the contract to cover this precise situation, Penn-York began to run some of its gas to depleted or abandoned wells of Republic. The contract provided for the duty and obligation of the Penn-York to deliver at specific points and the obligation of the Republic to pay did not arise until delivery was complete. The gas was stored in the depleted or abandoned wells before reaching the point of delivery and when withdrawal was made from the stored gas the payment for the stored gas was made with the payment for gas currently taken. The line losses and losses in storage fell upon the Penn-York.

The contract was filed with the Commission and the Commission thereafter by an order dated September 8, 1938, instituted an investigation to determine whether such contract was in the public interest. Eight hearings were held before the Commission, 900 pages of testimony were

taken and 44 exhibits received in evidence.

The Commission on June 13, 1940, 35 PUR(NS) 94, 118, unanimously approved an opinion written by Commissioner Burritt which opinion concluded as follows: "Because by its provisions as well as by its omissions the contract lacks clarity and definiteness and is capable of misinterpretation; because the price charged has not been shown to be reasonable, and is in fact unreasonable; and since for these reasons it is not in the public interest, the contract should be disapproved. . . .

"The above determination and recommendation is submitted upon the basis of facts of record for 1937 and 1938. The record contains some indication of trends and changed conditions of supply in 1939 and 1940, but no evidence of any change in cost. The burden of proof is on the company and it has not shown that the contract price was just and reasonable in 1938, or at any other time."

The Republic by a petition dated July 30, 1940, asked for an order directing a rehearing, specifying certain alleged errors in the Commission's opinion. On September 25, 1940, the Commission approved a memorandum submitted by Comissioner Burritt dismissing the petitioner's application for a rehearing.

[1-4] The Commission instituted an investigation of the contract in accordance with subdivision 4 of § 110 of the Public Service Law, Consol. Laws, Chap. 48, a portion of which is as follows: ". . . no charge for such electric energy and/or gas, whether made pursuant to contract or otherwise, shall exceed the just and reasonable charge for such electric energy and/or gas. In any proceeding to determine the reasonable cost of any such gas or electricity so sold and delivered or to be delivered to such purchaser the burden of proof shall be on the utility company purchasing the same. If it be found that any such contract or arrangement is not in the public interest, the Commission, after investigation and hearing, is hereby authorized to disapprove such contract or arrangement."

Subdivision four does not differentiate or distinguish transactions with affiliates from transactions with any or all others, if the transactions be in the nature of contracts or arrangements for the purchase of gas. The subdivision provides that the public utility purchasing gas must purchase it at a just and reasonable price. If the price exceeds a just and reasonable one for such gas the contract may be found to be "not in the public interest" and the Public Service Commission has authority to disapprove of it.

The cost to the seller must enter into the consideration of the just and reasonable charge, but the cost to the seller is not necessarily the determinative factor. Whatever is a fair and just price to the seller is at least presumptively the fair and just price which the public utility purchaser may pay. This language calls for the consideration of factors other than cost to the seller. Competitive conditions and market prices and proper provision for the future must be taken into account. The day-to-day costs are not the only costs to be considered. The charge is to be a just and reasonable charge, taking into account all of the things which enter into, or which are

likely to enter into, the business of supplying gas over a period of time.

The decision began with the recital that the Republic and Penn-York are affiliates and therefore did not deal at arm's length. The just and reasonable charge has to be considered and determined without reference to the fact that the parties to the contract are affiliates or nonaffiliates. The rule for each and both is the same.

The opinion says that the contract between the Penn-York and the Republic was defective in that it failed to mention the important part of the arrangement between the two companies under which gas produced by the Penn-York in excess of current requirements of the Republic were placed in storage for use later when production might not come up to current requirements. It says further, "The failure to cover the storage arrangements in the contract had another important effect. It concealed from the Commission the fact that gas produced in excess of Republic's current needs was to be placed in storage, which fact, if revealed, would have removed the only basis on which the industrial and dump provisions could have been sustained . . . . If storage had been mentioned the dump provisions of the contract might have been held repugnant to the public interest on their face and the contract would have been subject to immediate rejection by the Commission for this cause alone." 35 PUR(NS) at p. 105.

Gas is produced under the law of capture so that in a competitive field it belongs to the producer who first gets it out of the ground. Every producer in a competitive field seeks to withdraw gas as fast as possible, before a competing producer gets it. The ownership of gas in storage did not affect the ultimate total cost of gas in the Republic's distribution system.

[5–8] The decision calls the contract defective because it failed to provide for the storage of gas, and said: "From a conservation standpoint it is inexcusable to waste potentially valuable natural gas by using it for purposes for which a lower grade fuel is equally satisfactory. The Commission has been reluctant to allow rate schedules which permit the sale of natural gas for industrial purposes at very low rates, or for boiler fuel or other low-grade uses at whatever price it will bring, although it has sometimes been led to do so by circumstances beyond its control." 35 PUR(NS) at p. 104.

The Commission has such control only over the sale of natural gas produced within or without but sold within the state as is given to it by subdivision 2 of § 66 of the Public Service Law which confers the power of curtailing or discontinuing the use of natural gas for manufacturing or industrial purposes for periods aggregating not to exceed four months in any calendar year, if it is established to the satisfaction of the Commission that the supply of natural gas is not adequate to meet the reasonable demands of domestic consumption and may prohibit the use of natural gas in wasteful devices and practices.

The gas is stored while on its way to points of delivery and when delivered to the specified points it is billed and paid for just like the gas that has not been interrupted by storage.

The Public Service Commission has no power to determine that a contract

for gas is not in the public interest simply if it provides or permits or if it results in gas being produced by the public utility being sold to an industry for industrial use. If the Commission assumes to have such power it must be based upon the grant to disapprove if the contract be found to be not in the public interest. The Commission is not given unlimited authority to declare for itself the matters and things which are and which are not in the public interest. If the contract does not exceed the just and reasonable charge for the gas it is in the public interest, if it does exceed the just and reasonable charge for the gas sold to the Republic by the Penn-York then it is contrary to the public interest and the Commission has authority to disapprove the contract. The just and reasonable charge as provided in subdivision 4 of § 110 is the determining factor as to whether the contract is in the public interest or is not in the public interest. The burden of proof as to the reasonableness of the price which the Republic has to pay to the Penn-York is upon the Republic Company.

[9, 10] The decision says: "Because the difference between the two companies is only one of corporate entity, the contract price for the gas should not exceed what the cost (including a fair return) would be had Republic developed the enterprise for its own purposes.

"The application of this test of reasonableness requires basic information as to the seller's property, and as to its operating expenses. If the test is to be properly applied, this data must be on the same basis as it would be if the purchaser were itself producing the gas and these costs and expenses were recorded on its own books. This, of course, would be in accordance with the provisions of the Uniform System of Accounts prescribed by the Commission for gas corporations." 35 PUR(NS) at p. 106.

The opinion says: "There is certainly no justification for depleting the supply in storage by sales for low-grade uses. Republic should revise its rate schedules to eliminate therefrom any provisions which tend to encourage the wasteful use of gas for low-grade uses." 35 PUR(NS) at p. 105.

The question of the schedules of the Republic was not before the Commission. The question before the Commission was simply one as to the contract between the Republic and Penn-York and the decision goes out of the way to discuss many matters that were not relevant to the question before it.

The decision further says: "Accordingly, the seller's accounts were examined by Mr. Rausch, an accountant on the Commission's staff, who testified that certain adjustments would be necessary to bring them into conformity with the Uniform System of Accounts so that they could be used in such a cost determination."

The Commission treated all of the capital property, all of the investment, and all of the earnings and all of the expenses as if they were those of the Republic company; which had itself initiated and carried on the ventures in which the Penn-York engaged. The Penn-York is a business corporation, organized under the law applicable to business corporations. The Commission took all of the Penn-York accounts, which entered into the compu-

tation of the cost of gas, and made them over to conform to the Uniform Classification of Accounts for public utilities which it had no right to do. The Penn-York's price that it was asking for gas was to be determined on its financial setup and not upon some fancied setup upon the Uniform System of Accounts which the Republic would have had to have followed if it had gone forward.

[11, 12] The deduction of 5 per cent engineering fees paid to either Cities Service or H. L. Doherty & Company for mains construted in New York state or mains constructed in Pennsylvania was a proper and reasonable charge and should not have been deducted by the Commission. Mr. Eastman, an expert, fully qualified by the record, was examined as to this charge and he testified that a 5 per cent charge was a fair and reasonable charge in the market, charged by independents. There was no other evidence given. The evidence was rejected arbitrarily by the Commission as not being proof of the value of the services. It was proof by an expert, who was fully qualified and who showed that he knew what that sort of service was worth, that it was a reasonable fee, and therefore that fee should not have been deducted. There was no question about the work being done or the amount of it and the Commission was in error when it said that this evidence did not constitute proof.

[13] The Commission has found that 24 cents per thousand cubic feet shows a reasonable contract price for gas between the two affiliated companies. Whether the companies are affiliated or not makes no difference under the provisions of the law. The price found by the Commission is not supported by the evidence in the case because it is established by the evidence without contradiction that the actual charge for gas paid by the Republic to the Penn-York per thousand cubic feet delivered was as follows: 1937—41.13 cents; 1938—38.03 cents; 1939—33.50 cents.

This gas had to be transported from 90 to 95 miles through a pipe line built by the Penn-York at a large cost. The Republic was paying on the average to local independents, 29 cents per thousand cubic feet, in cases where the independents were located directly at the pipe line. The Penn-York paid the Cabot Corporation, which was an independent, 35 cents per thousand cubic feet during this time and the Republic paid 52½ cents minimum for ten years to the Iroquois, which was an independent. These figures when compared with the 24 cents per thousand cubic feet figure taken by the Commission as being a reasonable contract price between the two affiliated companies does not stand the test of the proof in the case.

The orders and determination of the Public Service Commission here under review should be annulled on the law and the facts with $50 costs and disbursements to the petitioners-appellants and matter remitted to the Public Service Commission.

Orders and determination of the Public Service Commission annulled on the law and facts with $50 costs and disbursements to petitioners-appellants and matter remitted to the Public Service Commission.

Hill, P. J., and Schenck, J., concur.

Bliss, J., concurs in the result.

Foster, J, dissents in an opinion.

FOSTER, J., dissenting: I dissent. There was, in my opinion, evidence to sustain the finding of the Commission that the price charged by Penn-York to Republic was not shown to have been just and reasonable. There must be some limit as to what may be fairly included in determining the reasonable cost to Penn-York, and Republic had the burden of proof as to this issue. The Commission was not bound to accept as the final and determinative factor in ascertaining such cost the total cost to Penn-York of acquiring some 600,000 acres of leaseholds, over a wide area and without consideration as to whether such leaseholds could be economically used to supply Republic with gas. The evidence supports the inference at least that this huge acreage of leaseholds was acquired for speculative purposes originally, and in the furtherance of a plan wholly unrelated to supplying Republic with gas. The collapse of the plan does not justify placing the burden of such speculative expense on Republic under the guise of cost. Because Penn-York is a business corporation does not permit it to rely wholly on the cost practices of the market place in its relation with a public utility, which is also an affiliate. In its decision, determinative of the cost of gas to Penn-York, the Commission has included all of the leaseholds which the latter still holds, whether productive or not. This treatment was as liberal as Penn-York could expect under the circumstances.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Wisconsin State Telephone Association

[2-U-1840.]

Monopoly and competition, § 85 — Telephone extension — Statutory notice.

1. Section 196.50(2), Statutes (prohibiting telephone extensions in occupied territory without a 20-day notice or contrary to a Commission declaration that public convenience and necessity do not require the extensions), should not be so construed as to prevent a telephone utility from serving a notice of its purpose or proposal to make future as well as immediate extensions of its lines and service as may be requested or demanded within a definite and specified area, p. 316.

Monopoly and competition, § 85 — Telephone extension — Statutory notice.

2. A telephone utility may properly file with the Commission statements accompanied by maps showing the territory in towns in which such utility proposes, in accordance with its effective rules, to make extensions of its lines and service when and if the same shall be requested or demanded by any member of the public, and if filed, the statement, or notice of its contents, should be served upon all other telephone utilities operating in the same town or towns specified in the statement and indicated on the map accompanying the same, in harmony with the requirements of § 196.50(2), Statutes, requiring notice of proposed extensions, p. 316.

Monopoly and competition, § 29 — Territorial agreements — Telephone companies.

3. No provision of law prevents the various telephone utilities operating in a particular town from agreeing among themselves as to the portion of such town with respect to which each of them will file a statement and map indicating an intention or purpose to make future extensions of its lines and service, and no law prevents all of the utilities thus operating in a given town from entering into any agreement whereby each files a statement and a map designating various portions of such town, each of which is exclusive of the other, p. 316.

Monopoly and competition, § 85 — Telephone extensions — Statutory notice — Filing of statements — Effect on Commission action.

4. The mere filing of statements designating territorial limitations of telephone utilities in a town and proof of service thereof upon other utilities operating in the town would not alone be sufficient to justify the Commission in considering that the duty imposed upon it by § 196.50(2), Statutes (prohibiting telephone extensions in occupied territory without a 20-day notice or contrary to a Commission declaration that public convenience and necessity do not require the extension), could be performed by merely accepting such statements and accompanying maps for filing, since the Commission cannot delegate the duty imposed upon it to anyone—much less the utilities, p. 316.

Contracts, § 7 — Regulatory duties of Commission — Agreement by utilities.

5. No agreement among utilities can operate to divest the Commission of its statutory duties with respect to any of them, p. 316.

Monopoly and competition, § 11 — Jurisdiction of Commission — Agreements between utilities.

6. The Commission would still have the duty and reserves the right, notwithstanding any agreement between telephone utilities operating in a particular town, to ascertain whether proposals to extend lines and services of such utilities in that town is required by public convenience and necessity, pursuant to § 196.50(2), Statutes, p. 316.

Monopoly and competition, § 85 — Telephone extensions — Statutory notice — General order of Commission.

7. A general order of the Commission permitting any telephone utility to file maps and statements showing territory in towns in which it proposes to make extensions in compliance with § 196.50(2), Statutes (prohibiting telephone extensions in occupied territory without a 20-day notice), should provide that the presentation of any such statement would not constitute notice of any proposal to extend lines or service until after sixty days from the time of such presentation, in order to obviate the difficulty of adequately affording protection to existing utilities if the Commission were confronted at any one time by a large number of statements by many utilities operating in towns scattered over the entire state, p. 317.

Monopoly and competition, § 85 — Telephone extensions — Statutory notice — Statement as to future extensions.

8. A general order permitting telephone utilities to file maps and statements indicating the territory in which future extensions are proposed, in order to comply with § 196.50(2), Statutes (prohibiting telephone extensions in occupied territory without a 20-day notice), should not require every tele-

phone utility of the state to file such a statement and accompanying map, p. 317.

Monopoly and competition, § 16 — Powers of Commission — Territorial agreements.

9. The Commission is without power to make telephone companies agree with respect to territory in towns in which the various utilities propose or do not propose to extend their lines or service, p. 317.

Monopoly and competition, § 29 — Territorial agreements — Telephone utilities.

10. The territorial scope of the separate undertakings of two or more telephone utilities operating in a single town is not properly the subject of bargain or compromise as between such utilities alone; if an undertaking is made, it results in an obligation of service to the public commensurate therewith and may not be withdrawn in derogation of the rights of the public under that obligation, nor may one utility validly transfer to another utility its obligation under its undertaking without consulting the public whose rights may be affected, p. 318.

Monopoly and competition, § 83 — Telephone utilities — Overlapping areas.

11. Overlapping of telephone utility undertakings does not necessarily result in such duplication of utility service that it is contrary to the public policy of the state, p. 318.

Monopoly and competition, § 16 — Powers of Commission — Territorial boundaries.

12. The Commission does not have power to prescribe mutually exclusive territorial boundaries of proposals by telephone utilities for extensions, although the Commission has power to investigate, ascertain, and determine the territorial scope of any utility's undertaking of service and find, incidentally and as a matter of fact, that a particular demand or request for service is within or not within that utility's undertaking, p. 318.

Service, § 52 — Powers of Commission — Extent of utility obligation.

13. The Commission does not have power to make an undertaking of service for any utility, although it has power to investigate, ascertain, and determine the territorial scope of the utility's undertaking and to determine that a particular demand or request for service is within or not within the undertaking, p. 318.

[December 10, 1942.]

APPLICATION *by Wisconsin State Telephone Association for issuance of general order for establishment, maintenance, and filing of telephone exchange area boundaries; general order issued relating to filing of statements and maps indicating scope of proposed extensions.*

By the COMMISSION: On May 11, 1942, Wisconsin State Telephone Association, comprising more than 90 per cent of the telephone utilities of this state as members thereof, filed a petition asking this Commission to enter an order applicable to all telephone utilities operating in Wisconsin, and providing that agreements be entered into, where possible, between such utilities as to their exchange area boundaries; for the filing of such

agreements with the Commission; for the establishment of such exchange area boundaries for those telephone utilities unable to agree with respect thereto; and for the maintenance thereafter of such exchange area boundaries as so filed or prescribed.

APPEARANCES: Wisconsin State Telephone Association, applicant, by R. M. Rieser, Attorney, Madison.

In favor of the application: Wisconsin Telephone Company, by Francis J. Hart, Attorney F. M. McEniry and L. J. Fitzgerald, Milwaukee; Brandon Telephone Company; Waunakee Telephone Company; Boscobel Telephone Company; Menomonee Falls Telephone Company; Marshfield Telephone Company; Westby Telephone Company; Arena-Ridgeway Telephone Company; Wood County Telephone Company; Cumberland Telephone Company; Lodi Telephone Company; Orfordville Telephone Company, by J. E. Byrne, Madison; Farmers Union Telephone Company, by R. P. Ripp, Secretary, O. J. Gonlet, Cross Plains; Fennimore Telephone Company, by Glenn L. Rowdon, Fennimore; Footville Telephone Company, by J. D. Kratz, and Pauline Kratz, Footville; Black Earth Telephone Company, by Robert O. Haseltine, Black Earth; Viroqua Telephone Company, by W. E. Lawton, Viroqua; Dodge County Telephone Company, by Victor J. Bickel, Reeseville; Almond Telephone Company; Colona Telephone Company; Union Telephone Company, by A. H. Bowden, Almond; St. Croix Valley Telephone Company, by L. T. Olcott, Vice President, St. Croix Falls; Community Telephone Company of Wisconsin, by E. E. Ringrose, Black River Falls; Langlade Telephone Company, by Mrs. W. J. Gallon, Antigo; Commonwealth Telephone Company, by H. W. Pike and F. H. Runkel, Madison.

As their interests may appear: Mt. Vernon Telephone Company, by M. K. Peters, Belleville; Markesan Telephone Company and Grand River Telephone Company, by H. A. Prior, Markesan; Weyauwega Telephone Company, by George H. Dobbins, Weyauwega; Hillsboro Telephone Company, by E. V. Wernick, Hillsboro; Lindsey Telephone Company, by E. O. Hankey, Marshfield; State Long Distance Telephone Company, by Charles H. Wiswell, Elkhorn; North-West Telephone Company and Milton & Milton Junction Telephone Company, by John S. Allen, Milton Junction; Somerset Telephone Company, by W. F. Kress, Somerset; United Telephone Company, by P. J. Weirich, Monroe; Belmont & Pleasant View Telephone Company, by H. J. Beardsley, Darlington; Brandon Ladoga Telephone Company, by Warren J. Whiting, Brandon; Jerpen Valders Telephone Company, by William Haberman, Valders, and E. R. Woodcock, Chilton; Union Grove Telephone Company, by Harvey A. Nelson, Union Grove; Mt. Horeb Telephone Company, by B. E. Dahlen, Mt. Horeb.

In opposition: The New Rockland Telephone Company, by John W. Mahnke, President, Reedsville, and W. H. Damm, Secretary, Collins.

Of the Commission staff: H. J. O'Leary, Chief, Rates and Research Department, C. B. Hayden, Acting Chief, Engineering Department, and

K. J. Jackson, of the Rates and Research Department.

A brief in support of the petition was filed on October 24, 1942.

As we analyze it, the petition herein seeks to accomplish two objects: (1) To obviate much, if not all, of the cumbersome procedure, as now followed, relative to the extension of telephone lines and service in territory outside the incorporated villages and cities of this state. (2) To establish and maintain the territorial scope of the undertaking of service of all telephone utilities operating in this state.

Provisions relative to the extensions of telephone utility lines and services are prescribed by § 196.50 (2), Statutes, which reads as follows:

"(2) Telephones, extension. No public utility furnishing telephone service shall install or extend any telephone exchange for furnishing local service in any town where there is a public utility engaged in similar service, without first having served notice in writing upon the Commission and such other public utility of the installation or extension of such exchange which it proposes to make, or make such installation or extensions if the Commission, within twenty days after the service of such notice, shall, upon investigation, find and declare that public convenience and necessity do not require the installation or extension of such exchange. Any public utility already engaged in furnishing local service to subscribers within any city or village may extend its exchange within such city or village without the authority of the Commission. Any public utility operating any telephone exchange in any city or village shall, on demand, extend its lines to the limits of such city or village for the purposes mentioned and subject to the conditions and requirements prescribed in §§ 196.04 and 196.19 subsections (4) and (5)."

From the standpoint of the administration of this statute, compliance with its literal requirements has been practically impossible. The Commission is directed to make its finding with respect to the public convenience and necessity of any proposed extension of telephone lines in towns and to do so within twenty days after the service of the notice of such proposed extension. Conceivably, the Commission might be equipped to make the investigation required to ascertain the facts necessary to support any such finding, and to make such finding within twenty days, if it had to deal with not more than one or two of such proposals at the same time. Actually, the Commission is not equipped to make such necessary investigation in any case, and the time specified for its action as prescribed precludes the possibility of a hearing or the consideration of any evidence presented thereat.

In view of that situation the Commission has heretofore followed a procedure which seemed to be the only procedure that would make said § 196.50 a workable statute, but which, at the best, is cumbersome and unsatisfactory. Upon receipt of the notice which the statute requires to be given to the Commission and upon proof of the notice having been given to other utilities, as also required, the Commission has simply waited for twenty days after completion of all notice as thus required to ascertain whether there is any objection to the

proposed extension and, in the absence of any such objection, has notified the utility proposing to make such extension that it may lawfully be made. In cases where objection has been filed, the Commission has given notice of a hearing and after hearing—and long after twenty days from the date of notice—has made its finding. Nevertheless, under a strict interpretation of the statute, unless the Commission within twenty days after the notice is given as required, makes a finding that such extension is not required by public convenience and necessity, such utility has a legal right to make it. The statute makes no provision for objections by anyone nor for the procedure to be followed in case they are made. Nor does the statute say or even imply that the absence of objections to any proposed extension is even presumptive—much less proof—of the fact that such extension is required by public convenience and necessity.

It is doubtless true that in the vast majority of cases, where there is no objection to a utility's proposed extension by any other utility, an investigation would not reveal any facts upon which the Commission could make a finding that such extension was not required by public convenience and necessity. Apparently about the only facts upon which the Commission could make such a finding are those which would show that the proposed extension would result in a wholly unnecessary duplication of lines or service without at the same time affording a reasonably adequate service that is not or cannot be available under existing facilities.

[1, 2] We do not think that said § 196.50(2), Statutes, should be so construed as to prevent a telephone utility from serving a notice of its purpose or proposal to make future as well as immediate extensions of its lines and services as may be requested or demanded within a definite and specified area. Accordingly, we deem it proper for any telephone utility of this state to file with this Commission statements, accompanied by maps, showing the territory in towns of this state in which such utility proposes, in accordance with its effective rules, to make extensions of its lines and service when and if the same shall be requested or demanded by any member of the public. If any such statement is filed with the Commission it, or notice of its contents, should be served upon all other telephone utilities operating in the same town or towns specified in the statement and indicated on the map accompanying the same.

[3] We know of no provision of law which prevents the various telephone utilities operating in a particular town from agreeing among themselves as to the portion of such town with respect to which each of them will file a statement and map indicating an intention or purpose to make future extensions of its lines and service. Nor do we think the law prevents all of the utilities thus operating in a given town from entering into agreements whereby each files a statement and a map designating various portions of such town, each of which is exclusive of the other.

[4–6] However, we do not consider that the mere filing of such statements with respect to any particular town, and proof of service thereof up-

on all other utilities operating in that town, would alone be sufficient to justify the Commission in considering that the duty imposed upon it by § 196.50(2), Statutes, could be performed by merely accepting such statements and maps for filing. The Commission obviously cannot delegate the duty thus imposed to anyone—much less the utilities whose regulation is vested in the Commission. No agreement among the utilities can operate to divest the Commission of its statutory duties with respect to any of them. Consequently, the Commission would still have the duty and reserves the right, notwithstanding any agreement between the telephone utilities operating in a particular town, to ascertain whether the proposals to extend lines and services of such utilities in that town was "not required by public convenience and necessity."

[7, 8] We assume that the duty of the Commission under said § 196.50 (2), Statutes, was imposed primarily for the protection of the public served by or entitled to service from the telephone utilities of this state. Obviously, the Commission could not adequately afford that protection if it were confronted at any one time by a large number of statements by many utilities operating in towns scattered over the entire state, unless the Commission was given more than twenty days in which to perform its duty. We think this difficulty could be obviated, however, by the issuance of a general order providing, in effect, that the presentation of any such statement would not constitute notice of any proposal to extend lines or service until after sixty days from the time of such presentation. The intervening time would afford sufficient opportunity for any investigation deemed necessary and for making the findings contemplated by the statute, if such findings should be deemed proper. Such order could also provide for an acceptance of any statement for filing within the 60-day period and that such acceptance would be equivalent to a determination by the Commission that no such finding was deemed necessary or proper.

Accordingly, the order in this proceeding will constitute a general order of the Commission permitting any telephone utility of this state to file maps and statements as hereinbefore indicated and prescribing the procedure with respect thereto.

[9] We do not perceive any necessity, at least at this time, for requiring every telephone utility of this state to file a statement and accompanying map indicating its present purpose or proposal with respect to extension of lines and services in towns. Upon the hearing, the applicant suggested that it would probably be unwise to make any such requirement applicable to so-called roadway or "switched" telephone utilities. We understand that few, if any, of such utilities belong to the applicant association. They were not represented in any considerable number in this proceeding and did not appear at the hearing therein. If, as applicant states, it is composed of 90 per cent of all the telephone utilities in this state (other than such "switched" or roadway utilities) and if applicant's members are generally favorable to the petition in this proceeding, then they need no requirement of this Commission to compel them to do what it appears that they will do of their own

volition. So far as agreements are concerned, with respect to territory in towns in which various utilities propose or do not propose to extend their lines or service, it would seem that such utilities are competent to make those agreements for themselves and, likewise, that this Commission is without power to make them agree in that respect if they do not wish to do so. We certainly do not intend by the order herein to attempt any such compulsion.

The purpose of any such compulsion would not be to facilitate compliance with the provisions of said § 196.50(2), Statutes, but rather to require each of the telephone utilities affected thereby to file a statement indicating of territorial scope of its undertaking of service outside the boundaries of villages and cities.

[10] A determination and an exact definition of the territorial scope of any utility's undertaking of service would often be advantageous from the standpoint of utility management as well as of regulation. But such undertakings neither are nor ought to be static; and, moreover, their territorial scope is not always what the utility management at any particular time may think or claim that it is. We do not think that the territorial scope of the separate undertakings of two or more telephone utilities operating in a single town of this state is properly the subject of bargain or compromise as between such utilities alone. If an undertaking is made, it results in an obligation of service to the public commensurate therewith; and may not be withdrawn in derogation of the rights of the public under that obligation. Nor may one utility validly transfer to another utility its obligation under its undertaking without consulting the public whose rights may be affected. Utilities may legally state the boundaries of the territory in which they hold themselves out to serve the public. But such statements are not all conclusive and do not bind the public. Nor should this Commission accept them as necessarily determining or defining the territorial scope of the undertaking of any utility.

[11] An idea apparently inherent in applicant's proposal that all telephone utilities should be required to file statements and accompanying maps in accordance with agreements entered into with respect thereto, is that the undertakings of the various telephone utilities operating in any rural town are, or at least ought to be, mutually exclusive in their territorial boundaries. This has not been true in the past. As we view it, the areas of such undertakings occasionally overlap. Nor do we think that such overlapping of telephone utility undertakings necessarily results in such duplication of utility service that is contrary to the public policy of this state.

[12, 13] The petition in this proceeding suggests that if the telephone utilities of this state are unable to agree upon the mutually exclusive territorial boundaries of their proposals for extension, then the Commission should prescribe them. We do not consider that the Commission has the power to do this. Doubtless the Commission has power to investigate, ascertain, and determine the territorial scope of any utility's undertaking of service; and to find, incidentally and

as a matter of fact, that a particular demand or request for service is within or not within that utility's undertaking. But we do not have the power to make an undertaking for any utility.

If, in response to the request of the petition herein, we should attempt to compel all the telephone utilities to file statements as to their undertakings of service, or should attempt to establish exchange area boundaries for all utilities who could not agree upon those boundaries for any particular town, we would be under the necessity of determining the exact scope of the territorial undertaking of each utility operating in all towns of this state.

Aside from the appalling magnitude of the task which the Commission would thus impose upon itself, we do not consider that it would be wise or profitable to undertake it at this time. There can be no really adequate or satisfactory regulation of extensions of telephone utility service until some provision shall be made by the legislature defining the rights and privileges, as well as the duties and obligations of the utilities of this state with respect thereto.

The order hereinafter made is intended to provide a more satisfactory administration of the authority vested in the Commission by § 196.50(2), Statutes. It is not intended that the procedure as prescribed in such order shall, in its effect, authorize such utilities, or any of them, to enter into agreements or to make statements as to the territorial scope of their various undertakings of service, which shall thereafter be conclusive upon the Commission or binding upon the public entitled to receive service from such utilities. Inevitably the filing of a statement and map by any utility pursuant to the order herein made will constitute a declaration that the utility filing the same holds itself out as willing to furnish its utility service within the territory indicated on such statement or map. But the acceptance of any such statement for filing by the Commission does not mean, nor will it be considered by the Commission, as necessarily limiting such utility's undertaking to the territory thus designated.

The Commission therefore finds:

That the general order as hereinafter prescribed is required for the adequate regulation of extensions of lines and services by telephone utilities in the towns of this state.

Order

It is therefore *ordered:*

1. That after the effective date of this order, any telephone utility of this state may present to this Commission a statement, accompanied by an accurate map, indicating the territory in any town or towns of this state in which said telephone utility presently proposes, subject to its filed extension rules, to make extensions of its lines and service at any time when such service may be requested or demanded by any person within the territory as thus designated; that proof of service of such statement and map upon all other telephone utilities furnishing service in the town or towns designated in such statement shall be furnished with the presentation thereof; that objections by such other utilities to the proposed extensions of lines or service

indicated by such statement and map shall be filed with the Commission within twenty days from the date of service of such statement upon any of such other utilities; that upon presentation of such statement and accompanying map to the Commission, and proof of service of the same as above required, the Commission will consider the same and, unless the Commission within sixty days after such presentation of said statement and map shall consider and find that the proposed extensions of lines or service, or some part thereof, as indicated therein is not required by public convenience and necessity, then the said statement and accompanying map shall be filed, and such filing shall be considered as a full and complete compliance by the utility filing the same with the requirements of § 196.50(2), Statutes.

If no objection to the extension of lines or service as indicated on any statement and map is filed within the time as above prescribed, the Commission may upon due consideration and within the 60-day period as above provided, direct that such statement and map be accepted for filing; and such filing, pursuant to such direction, shall constitute a determination by the Commission that it does not find that the extensions of lines or service, or both, as proposed in said statement and map are not required by public convenience and necessity.

Neither the presentation nor the filing of any statement and map pursuant to the provisions of this order shall be determinative of the restriction of the undertaking of service of the utility presenting the same to service within the territory designated in such statement and map, nor shall it be construed as limiting any statutory power of the Commission.

The presentation of all statements and maps pursuant to this general order shall be made in accordance with such forms and requirements as may be hereafter prescribed by supplemental order made in this proceeding. Jurisdiction is hereby retained for the purpose of making such supplemental order.

2. That except as the petition in the above-entitled proceeding may be partially granted by the foregoing general order, such petition be and is hereby denied.

Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

Non-metallic Pipe Offered by Fibre Conduit Co.

The Fibre Conduit Company of Orangeburg, N. Y., has announced a new line of non-metallic drain and sewer pipe. According to H. J. Robertson, Jr., president of The Fibre Conduit Company, the new Orangeburg non-metallic pipe is resistant to moisture, tuberculation, corrosion, and most dilute inorganic acids and alkalies. Extremely durable, light and easy to handle, it can be installed by almost anyone and can be cut to desired lengths with an ordinary wood-working saw. Couplings maintain pipe lengths in line and provide tight joints if desired.

Two types are available — perforated and non-perforated. The perforated pipe is designed especially for septic tank filter beds and foundation footing and field drainage. A distinct advantage of the perforated pipe is that it repels root growth.

Orangeburg non-metallic pipe is made of cellulose fibre impregnated with coal tar pitch. No critical war materials are used in its manufacture. Underground electrical conduits made by The Fibre Conduit Company of the same composition have been in use by many utilities for upwards of 50 years, according to the manufacturer.

Bulletin Display Cabinet

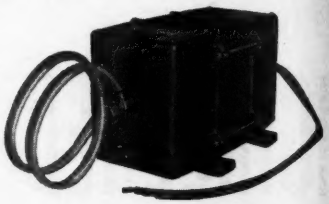
A modern bulletin display cabinet, known as the M.S.A. Toll-Board, has been announced by Mine Safety Appliances Company. The unit is designed for better display of wartime safety and morale posters, instructions, and special messages. Sturdily constructed of non-critical materials, the Toll-Board's glass-front cabinet permits quick change of bulletin material.

The M.S.A. Toll-Board is illuminated, and equipped with simple, trouble-proof hardware designed to give years of efficient service, the manufacturer points out. Tightly fitting seams make the Toll-Board's use in exposed locations practical. Finished in two-tone green enamel, the unit measures 32 in. x 25 in. x 3½ in., and is equipped with a glass sign with sandblasted letters reading "Safety Bulletins" or "General Bulletins."

Full details which are contained in a descriptive bulletin (CD-10) may be obtained from the manufacturer, Braddock, Thomas and Meade Streets, Pittsburgh, Pa.

Testing Transformer Isolates External Radio Interference

The engineering department of The Acme Electric & Mfg. Co. of Cuba, New York, has designed the Acme Type T-4173 Isolating Transformer to eliminate all interference that would affect the testing of communication and



radio equipment whose performance depends upon accuracy. This transformer makes use of a secondary completely enclosed in a copper shield. Secondary terminal connections are provided by means of a lead shielded cable, the sheath of which is integrally joined to the copper enclosing shield of the secondary winding.

The Isolating Transformer, the manufacturer claims, normally rated at 2 kva, is capable of handling an over-load of 50 per cent or total load of 3 Kva. The regulation of the transformer is 1 per cent at 1 Kva. The lighting in the shielded test-room, the use of soldering irons, instruments, and various types of test equipment may all be operated from the shielded secondary of the transformer without causing objectionable voltage drop.

Critical Materials Saved In Transformer Construction

Large amounts of war-needed materials are being conserved by applying recent engineering developments to electric transformers according to the Westinghouse Electric & Manufacturing Company. The company reports that creation of a new steel, called Hipersil; perfection of a device to permit each transformer to carry its maximum load safely, and development of an improved method of cooling oil in transformer tanks have enabled it to save 4,000 tons of steel, 1,000 tons of copper and huge quantities of oil during the past year.

Catalogs and Bulletins

Welding Processes

Specific instructions for the various welding processes are given in a 100-page booklet distributed by the Aluminum Company of America, entitled, "Welding and Brazing Alcoa Aluminum."

The booklet is designed to aid in the conservation of aluminum and to speed up vital production. It explains how to correctly use and work the metal and includes several of the important commercial welding methods.

Copies of the booklet are available and may be obtained by writing to the Aluminum Company of America, Pittsburgh, Pennsylvania.

"Captive Latch"

To save time and trouble in installing and cleaning its new line of composition reflector fluorescent fixtures, Sylvania Electric Products Inc. announces the "Captive Latch"—a powerful spring-type fastening that holds the reflector securely to the top housing.

Easy to operate, the latch requires only a quarter turn to remove the reflector—no tools are needed and, since the latch is an integral part of the top housing, it cannot become loose and drop out.

The latch is inconspicuous in its position between the lamps and in no way affects the appearance or efficiency of the reflecting surface. Specification sheet available by writing to Sylvania Electric Products Inc., Advertising Department, Salem, Mass.

South Bend Turret Lathe

Bulletin 1002 describing the South Bend Turret Lathes, Nos. 1001-Z and 1002-Z, has been recently issued by the manufacturer.

This four-page file size bulletin describes and illustrates the new South Bend Turret Lathes and their construction features. Convenient tabulated specifications list all the necessary information concerning capacities, feeds, speeds, and dimensions. These Turret Lathes are designed for the rapid production of small chucking and bar work to close tolerances.

Bulletin 1002 can be obtained from the South Bend Lathe Works, South Bend, Indiana.

Water Service Products

A new catalog No. 121, describing its line of water service products, including centrifugal and rotary pumps, has been issued by the Red Jacket Manufacturing Company, Davenport, Iowa.

A complete price list for all Red Jacket water service products is given in bulletin No. 221-D.

Power and Distribution Transformers

Power and distribution transformers and other electrical distribution equipment important in maintaining an efficient flow of power to vital war industries are completely described in a new bulletin (B-6186) designed to cover the entire line of this Allis-Chalmers equipment.

The new book discusses important wartime considerations such as the use of modern welded construction and standardization of design, which saves vital materials in manufacturing and provides the advantages of interchangeability in installation.

The new electro-cooler for increasing transformer capacity, and unit substations which simplify power control and distribution are two new developments treated in the bulletin. Others included are feeder voltage regulators, instrument and metering transformers, the oil-sealed inert gas system which protects transformer oil by isolating it from the outside air, and load-ratio-control for load regulating voltage, power factor and phase angle.

Copies of bulletin B-6186 may be obtained from the Allis-Chalmers Manufacturing Company, Milwaukee, Wisc.

Yeomans Pumps

The architects' and mechanical engineers' book of Yeomans pumps for use in drainage, sewage, water supply, circulation, boiler feed, condensation, and air conditioning, has been published by the Yeomans Brothers Company, Chicago, Ill.

This booklet is illustrated and describes typical installations of the various types of pumps made by this manufacturer.

Manufacturers' Notes

Order of Merit Awarded To Westinghouse Men

Samuel W. Chantler, superintendent, and Percy N. Love, industrial relations supervisor, of the Canton Ohio Division of the Westinghouse Electric and Mfg. Company, have been awarded the Westinghouse Order of Merit for their achievements in speeding war production.

Bronze medals designed by the noted sculptor Rene Chambellan were presented to the two officials by F. D. Newbury, Westinghouse vice president. Each medal, bearing a silver "W" and the inscription "Whom his fellow men delight to honor," denotes membership in the Order of Merit, established at Westinghouse in 1935 to honor employes who make outstanding contributions to the electrical industry and its associated crafts. Awards are voted by the company's Board of Directors.

G-E To Equip 30 PCC Cars for Los Angeles Railway

The Los Angeles Railway Corporation, which has had 95 PCC cars in service for several years, has recently ordered 30 more, all to be equipped with General Electric motors and control, according to a recent announcement of the manufacturer.

These new cars will be added to the three routes on which PCC cars have furnished all base, night and Sunday service, and a major portion of the peak service. Los Angeles was a leader in putting into effect a comprehensive staggered hour program for offices, stores, and industries, which greatly reduced peak traffic,

(*Continued on page* 40)

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Manufacturers' Notes (Cont'd)

but despite this were able to demonstrate such a need for additional equipment and to present so good a case to the ODT as to secure approval of this purchase.

International Harvester Making Torpedoes

Aircraft torpedoes, one of the most vital and effective weapons in the war plans of the United Nations, are now being manufactured by the International Harvester Company, several months ahead of the date promised for starting production, according to an announcement by Fowler McCormick, president of the company. Manufacturing and assembly operations on the torpedo are being performed in several plants of the company.

The torpedo is unlike anything the company has manufactured before. For, although Harvester has handled manufacturing jobs that called for equal precision, notably in the Diesel fuel injection pump, it has never built any product where the tolerances—or allowable margins of error—were as close as in the torpedo. The torpedo work is as fine as the finest watch or compass. There are in excess of 1,000 parts which must be machined and hand-finished to almost infinite tolerances and adjusted to extremely close fits.

G-E Appoints R. W. Beard

R. W. Beard, who formerly handled planning and execution of the General Electric Federal and Marine program in the San Francisco territory, has been named assistant to the manager of the company's Lighting Division in Schenectady, N. Y. Upon graduation from the University of California in 1923 with a B.S. degree in electrical engineering, he joined General Electric as a testman, also completing the company's advanced engineering course.

Westinghouse Reports

The Westinghouse Electric & Manufacturing Company reports that at its current tonnage rate it is delivering enough material to fill 4,900 freight cars in a single month. The company has stepped up its monthly production from $34,000,000 worth of equipment last January to more than $52,000,000 in October. To meet this schedule, over 1,500 employees have been added every month during the past year.

In a review of the company's war effort, A. W. Robertson, chairman, disclosed that despite shortages in critical material and changing labor conditions, not a single plant has been closed down for a day for lack of necessary material.

All told, the company has spent in the last four years more than $165,000,000 for additional facilities. Eighty-one million of this amount was provided by the Government, and other millions will be refunded to the company over the years.

Overloading Electric Apparatus As a War Measure

Permissable overloading of electric apparatus as a means of conserving the vital resources of the electrical industry in wartime was discussed by Robert Treat of General Electric's central station engineering department at a meeting of the System Operators of New England.

According to Mr. Treat, the real problem lies in determining the advisable limits for overloading. The emergency loading procedure must be followed cautiously if gains are to exceed losses. Mr. Treat pointed out that exact knowledge concerning the life of electrical insulation assemblies is limited because of the complexity of the problem.

ABC Flies the "E"

The distinction of being one of the first washer and ironer manufacturers to receive the Army-Navy Production Award goes to the employees of Altorfer Bros. Company, Peoria, Illinois. The presentation ceremonies, in recognition of ABC's high achievement in the production of war goods, were held February 6th, in the company plant.

ABC was one of the first plants in the washer industry to convert 100 per cent to the manufacture of war materials, having offered the facilities and resources of its factory to the government fully a year before Pearl Harbor.

I.B.M. Promotions

The promotion of John C. McPherson to the position of director of engineering for the International Business Machines Corporation was announced recently by Thomas J. Watson, president of the company. For the past two years Mr. McPherson has served as manager of the company's future demands department.

Charles W. Cooper has been promoted to the position of assistant to the comptroller in charge of logistics. He was previously manager of the Department of Logistics under F. W. Nichol, vice president and general manager, who has been its directing head since its formation.

Raymond G. Ellis

Raymond G. Ellis of the Advertising Department, The Electric Storage Battery Company, Philadelphia, died February 14th. He had been convalescing from an operation, when seized with an unexpected heart attack.

Mr. Ellis was widely known among the personnel of trade and technical magazines, with many of whom he had maintained contact throughout the 24 years he was in the Advertising Department. He entered the employ of the company on April 15, 1919.

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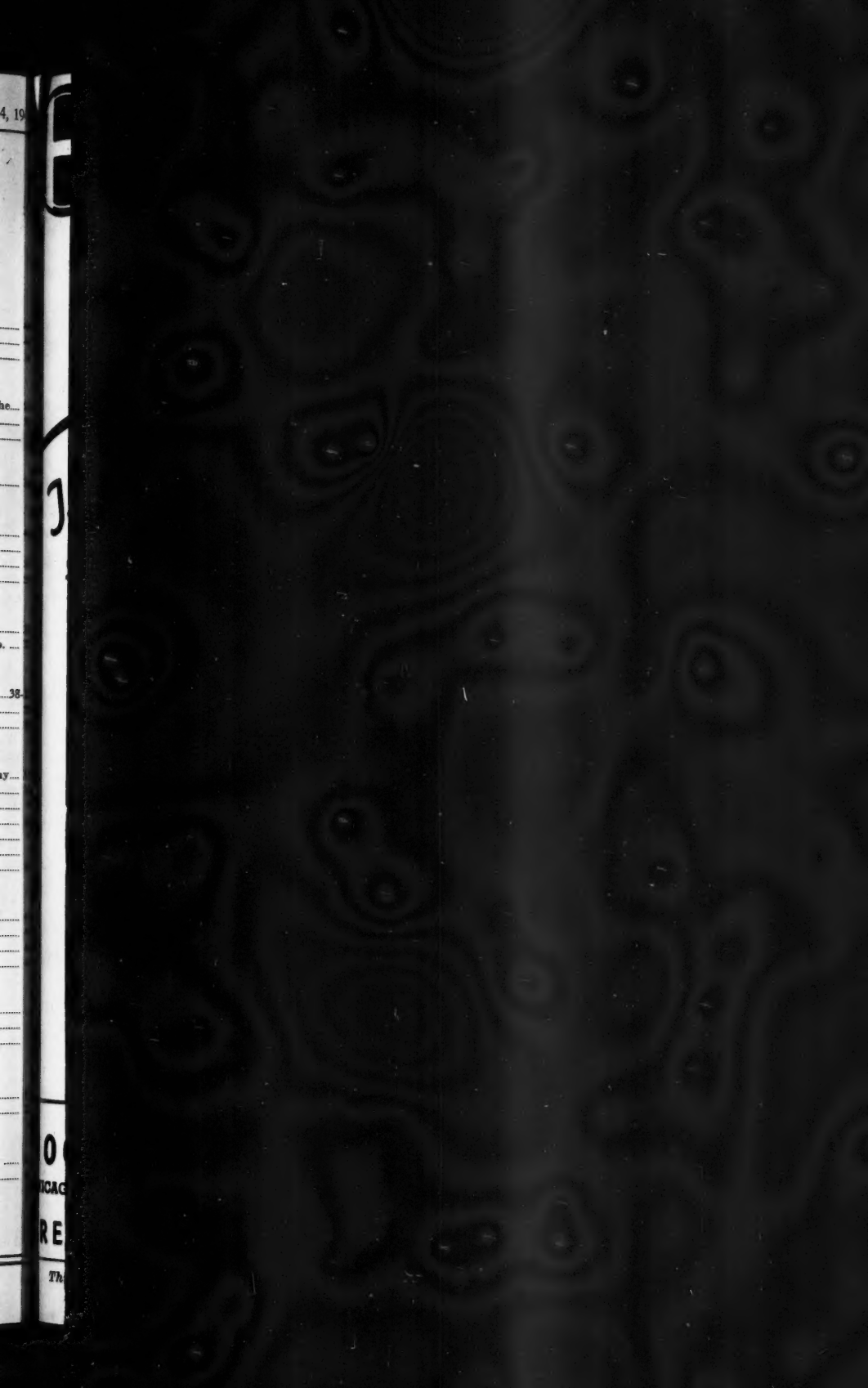
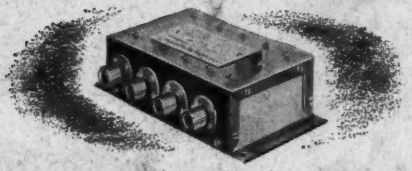


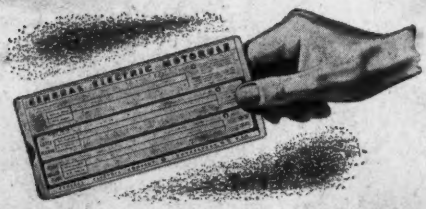
Electrical Ideas in Action!

HELPING TO MEET AMERICA'S WARTIME NEEDS



FLUORESCENT LIGHTING for glareless illumination of aircraft instruments and indicators has been given additional impetus by the development of a new lightweight combination ballast and transformer for use with four 4-watt, oval fluorescent lamps. Other lightweight ballasts in this new G-E line are specially designed for fluorescent lighting of aircraft cabins.

A "BLACKOUT" STREET LUMINAIRE developed G.E. has now been officially approved the War Department. Its lighting inten is equivalent to 1/50 of the illumina under a full moon. It is recommended outdoor areas where a "blackout" m impede military movements or war duction. Light is supplied by a 9-watt l life lamp surrounded by a plastic diffu which can be operated continuously s to be in service if and when an alarm sou



MOTOR HORSEPOWER REQUIRED for metal-cutting operations on lathes, milling machines, and drills is quickly computed by means of the G-E MOTORULE, a newly developed motor-hp selector for machine-tool users. It works on a large variety of materials, and over a wide range of feeds and cuts. Use of this motorule will help industry to obtain full-scale machine output and to avoid "overmotoring."

YOUR ENGINEERS serving industry and o users of electric energy have an impor war job to do in helping to make most of our power resources. Electrical id such as these, though sometimes minor themselves, can add up BIG when wid applied—frequently saving energy, power, and critical materials. General E tric is ready to assist in the cause of conse tion by supplying further information application aid wherever better electri utilization can help to win the war. Gen Electric Company, Schenectady, New Y

The Army-Navy "E", for Excellence in the manufacture of war equipment, now flies over six G-E plants employing 100,000 men and women.

GENERAL ELECTRIC

301-15E-170

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